

Electronic Products License Agreement

Sales Territory Number:

Before you use Bell & Howell Information and Learning Company's electronic products, 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. By accepting the agreement and using this Bell & Howell Information and Learning Product, you agree to be bound by these Terms and Conditions. If you have questions, please call Bell & Howell Information and Learning at . Please retain a copy of the Agreement and keep it in your files. You can view an electronic copy of it at any time through the "Help" function of CD-ROM products and in the "Preferences" portion of the menu in on-line products.

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

Authorization by Bell & Howell Information and Learning Company (Licensor):

Signature: 

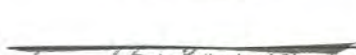
Name: 

Title: 

Date Signed: 10/20/99

Institution: University of California

Authorization by Customer (Licensee):

Signature: 

Duly Authorized Signature

Name: 

Title: 

Date Signed: 10/1/99

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.

1. **License:**

- a) Subject to the terms of this Agreement, Bell & Howell Information and Learning Company ("B&H") hereby grants you a non-exclusive, non-transferable license to have access to and use the on-line, tape or CD-ROM products provided by B&H to you as set forth in the attached Fee Schedule A, attached invoice or accepted purchase order (the "Products"). You do not acquire any ownership interest or rights in the Products and associated materials, or any parts thereof, and all such rights and interest remain in B&H and its licensors. This License is granted to the entity at its principal location; additional authorized sites or locations must be listed on the Additional Sites/Member Libraries- Schedule C.
- b) You will use the Products solely for your own personal or internal use. 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 B&H or its licensors. 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 B&H that you will not use the Products or any material retrieved from the Products in the course of providing computer-assisted research services to third parties. **Third parties are those parties who are not a student, faculty or staff person of your institution.**
- 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 public users. You will limit such use to the customary services provided to patrons and you will not commercially re-distribute the materials retrieved from the Products or provide access to the Products to other libraries or third parties, unless specifically authorized by B&H.
- 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, is subject to the Copyright Act of 1976, Title 17 U.S.C. and other applicable intellectual property laws. PowerPages access to article images must be routed through the B&H Network IMAGEserver software.
- e) Additional restrictions on your use of the materials retrieved through the Products may be set forth on computer screen displays. **Such additional restrictions shall not materially alter your use of the Product(s). If such restrictions materially alter your use of the Products, you may terminate your subscription to the Products. Upon your subscription termination, B&H will refund to you a pro-rata portion of the subscription fees representing the unused portion of your subscription term.**
- f) With on-line Products, you will limit access to the on-line Products to authorized users through the use of user identification number and passwords, IP address verification or other secure method of user verification. You are responsible for all charges incurred by users accessing the on-line products through your designated secure access

method(s). You will immediately notify B&H if you believe one or more of your secure access method(s) is being misused. The parties shall cooperate in the implementation of additional security procedures as they are developed.

2. **Fees and Payments.** You will pay the fees for the Products as shown on the applicable Fee Schedule A, attached invoice, or accepted purchase order. B&H may update and supply revised transactional fees (fee-per-article charges) to you from time to time. You will pay the fees for the Products when due.

For CD-ROM Image Databases, you will download the usage information to the tracking diskette and return the diskette to B&H as requested.

3. **Term and Termination.**

- a) If you are licensing the Products on a subscription basis, this Agreement shall continue until the Expiration Date listed on the Fee Schedule A, attached invoice, or accepted purchase order to this Agreement or, if it is renewed, until the new Expiration Date. If not, this Agreement will continue until terminated by either party upon at least ten (10) days prior notice to the other. B&H may suspend delivery of Products to you if you fail to comply with your obligations under this Agreement and B&H can pursue any other legal remedy available to it.
- b) You may retain the Abstract & Index and full-text CD-ROM and Tape Products delivered to you by B&H after the end of your subscription term. You shall receive a complimentary CD-ROM subscription to the B&H Dissertation Abstracts CD-ROM during the term of your subscription to ProQuest Digital Dissertations (PQDD) or its successor product. The CD-ROM product contains only the Abstracts and Index records and does not have the same functionality as PQDD.
- c) "Image Databases" means databases provided to the customer in tangible medium, including but not limited to CD-ROM or Tape medium, that contain electronically scanned facsimile reproductions of the materials that are in addition to the abstract, index and/or full-text reproduction of the materials contained in the database. Upon expiration or termination of this Agreement, you will return or destroy any Image Databases according to the instructions provided by B&H. You will certify to B&H the return or destruction of Image Databases if requested. If you want to continue to use the Image Databases after expiration of this Agreement, you will have to enter into a separate agreement with B&H.

4. Access to Dissertations for University of California as a Participating Institution after termination of full PQDD subscription. A participating institution is any qualifying institution that requests that its students submit their dissertations to B&H for publication. B&H will provide you, as a participating institution, with free access in digital format to all the dissertations by your Doctoral and Master degree candidates that B&H publishes in digital format (the Dissertations). This access will be provided to you whether or not you maintain your subscription to the entire ProQuest Digital Dissertations on-line product. You acknowledge that all distribution and reproduction of the Dissertations in any format is subject to the Copyright Act of 1976, Title 17 U.S.C. and other applicable intellectual property law. Accordingly, you will use the Dissertations solely for your own internal purposes and will not publish, broadcast or sell any of the materials retrieved through the ProQuest Digital Dissertation program. Provided, however, that you may make available for inter-library loan one paper copy of each of your candidates' dissertation or thesis. If B&H or a successor entity cancels the ProQuest Digital Dissertation program and no longer distributes the Dissertations in any format as part of its business activities, each participating institution will receive copies of the all Dissertations it's Doctoral and Master's degree candidates published by B&H under this program to the date of the program's cancellation. Dissertations submitted to B&H for publication in digital format will be returned to the source institution at no charge. Dissertations submitted to B&H on paper and reformatted by B&H into digital format will be supplied at cost recovery. In all cases, Dissertations will be returned to the source institution on the media and in the format stored by B&H or its successor entity. All further distribution or reproduction of the Dissertations is subject to the Copyright Act of 1976, Title 17 U.S.C. and other applicable intellectual property law.

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 B&H will remain the sole property of B&H 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, B&H may add, delete or modify information, databases, materials, capabilities or services to on-line Products with or without notice to you. All such information, databases, materials, capabilities and services shall be subject to the terms and conditions of this Agreement at the time they are added to the Products.

7. **Hardware and Software.**

- a) B&H may supply software and hardware from time to time for use in connection with the Products. B&H 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. B&H SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR DETERMINING THE COMPATIBILITY OF ANY HARDWARE OR

SOFTWARE NOT SUPPLIED BY B&H 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 includes 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 Bell & Howell 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 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurement.

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

EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, THE PRODUCTS AND ALL EQUIPMENT AND SOFTWARE PROVIDED BY B&H 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 B&H NOR ANY PROVIDER OF INFORMATION OR SOFTWARE IN THE PRODUCTS WARRANTS THE USE OF THE PRODUCTS OR THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR MAKES ANY WARRANTY AS TO THE AVAILABILITY OF THE PRODUCTS OR AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION OR THE RESULTS OF LICENSEE'S USE OF THE PRODUCTS, THE SOFTWARE OR THE INFORMATION, EVEN IF ASSISTED BY B&H.

10. **Limitation of Liability.** THE MAXIMUM LIABILITY OF B&H 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 B&H FROM YOU HEREUNDER UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED. IN NO EVENT SHALL B&H OR ITS LICENSORS BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES RELATED TO THE USE OF THE PRODUCTS OR B&H's FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF WHETHER B&H OR ITS LICENSORS ARE NEGLIGENT.

11. **Indemnification.** B&H shall defend, indemnify and hold you and your officers, agents & employees harmless from all damages, liabilities, costs, fees, including, but not limited to reasonable attorney's fees, resulting from any judgment or settlement agreement arising out of any claim of a third party that B&H's sale of the Products to you or our use of said products consistent with the license granted in this agreement constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party, provided that you give prompt notice of the infringement claim to B&H, provide such cooperation and assistance to B&H as reasonably necessary to defend the claim and you allow B&H to have sole control of the defense. You retain the right to participate in the defense at your own expense. B&H 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 B&H 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. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

12. **Miscellaneous.**

a) **Assignment.** Neither party may assign this Agreement or any right granted hereunder without the prior written consent of the other party.

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) **Interruption of On-Line Products.** Neither B&H 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 B&H. **Provided,**

however, that B&H shall use reasonable efforts to provide continuous service 7 days per week with an average of 98% up-time per month, excluding schedule maintenance and repair. Scheduled down-time will be performed at a time to minimize inconvenience to B&H customers worldwide.

- d) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes any and all previous and contemporaneous understandings or agreements between the parties with respect to the same subject matter. The terms of your Purchase Orders, if any, are for your convenience and do not supersede any term or condition of this Agreement.
- e) **Governing Law.** The Agreement shall be construed according to the laws of the State of California, without application of its conflict of laws provisions.
- f) **Effective Date.** This Agreement shall be effective on the Subscription Start Date on the front of this Agreement, or, if for on-line Products, as of the first date on which the Products are provided to you.

13. Additional Customer Requested Provisions

- a) **Year 2000.** B&H certifies that the Products being provided to University of California will operate properly in the Year 2000 and beyond and in situations where dates of the Year 2000 are used. B&H specifically disclaims any representations regarding your particular web browser software, Internet service providers or other third systems or services that may be necessary to access the ProQuest Direct service.
- b) **ADA Compliance.** B&H shall comply with the American with Disabilities Act (ADA) by supporting assistive software and devices such are large print interfaces, voice-activated input, and alternate keyboard or pointer interfaces in a manner consistent with WAI {Web Accessibility Initiative}.for its employees.

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Title: Associate Director
Institution: University of California
Address: California Digital Library
300 Lakeside Dr., 6th Fl.
City: Oakland
State/Province: CA
Zip/Postal Code: 94612-3550
Country: _____
Telephone: _____
Fax: _____
E-Mail Address: _____

Bill To Address:

Attention: _____
Title: Associate Director
Institution: University of California
Address: California Digital Library
300 Lakeside Dr., 6th Fl.
City: Oakland
State/Province: CA
Zip/Postal Code: 94612-3550
Country: _____
Telephone: _____
Fax: _____
E-Mail Address: _____

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ANY CHANGES, ADDITIONS OR DELETIONS TO THE TERMS AND CONDITIONS MUST BE APPROVED BY B&H's LEGAL DEPARTMENT

Pricing includes full image access to all University of California dissertations and theses submitted to B&H (1997 and forward) at no additional cost. B&H will also provide CDL with MARC records of these works.

User Materials:

Administrator Packages: # 1

(Default 1 per site)

Additional Web manuals: # 9

Lynx manuals: # _____

Sitebuilder manuals: # _____

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Division: Library

INSTITUTION: California Digital Library

Subscription Database:	Subscription Term	Subscription Fee					Format		
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☒ **PQD** / ☐ **SITEBUILDER** (Terms of the Sitebuilder License Agreement apply)

Database (specify):									
DigitalDissertation	9/99-8/00						☒	☐	☐
-							☐	☐	☐
-							☐	☐	☐
-							☐	☐	☐
-							☐	☐	☐
-							☐	☐	☐
-							☐	☐	☐
-							☐	☐	☐
-							☐	☐	☐
-							☐	☐	☐
-							☐	☐	☐
TOTAL									

☐ **CD-ROM** / ☐ **TAPE/ POWERPAGES**

Database (specify):	to	☐ NEW	☐ UPGRADE	☐ NETWORK CONFIGURATION	☐ RENEWAL			
		☐ TRIAL Payment of B&H's invoice for the amount below constitutes acceptance of the subscription						
	to					☐	☐	☐
	to					☐	☐	☐
	to					☐	☐	☐
	to					☐	☐	☐
	to					☐	☐	☐
	to					☐	☐	☐
Extra Index:								
	to					☐		
	to					☐		
# of Simultaneous Users:	TOTAL							

Purchase Order Number (if relevant):

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Expand on any current customer subscriptions affected by this transaction, (such as CD-ROM subs).

(Fee Schedule A) GRAND TOTAL	per 1 yr (term length)

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INSTITUTION:

Schedule C Additional Sites/Member Libraries

This schedule details additional entity sites at which the Products will be used and/or Member Libraries that are covered under this Agreement. If Licensee is an association of libraries, all member institutions shall be identified below (the "Members"). Should any Site or Member be in default of the terms and conditions of the Agreement, Licensee shall correct such default within fifteen (15) days after discovering such default, or terminate such Member's access to the Services. Additional Sites or Members may be added upon written notice to B&H and payment of additional fees, if applicable.

University of California campuses at:

- Berkeley
- Davis
- Irvine
- Los Angeles
- Merced
- Riverside
- San Diego
- San Francisco
- Santa Barbara
- Santa Cruz
- UC Office of the President, Oakland

Authorization by Customer (Licensee):

10/1/99

Date Signed

Name

Title