

British Columbia Electronic Library Network
Electronic Products License Agreement

THIS AGREEMENT is made 9th day of July, 2008

BETWEEN: PROQUEST LLC of 789 E. Eisenhower Parkway, P.O. Box 1346, Ann Arbor, MI 48106-1346, U.S.A. (herein referred to as "the Licensor")

AND: BRITISH COLUMBIA ELECTRONIC LIBRARY NETWORK (BC ELN), 8888 University Drive, British Columbia, V5A 1S6 (herein referred to as 'the Consortium')

WHEREAS the Licensor holds or administers the rights granted under this Agreement; and

WHEREAS the Licensor desires to grant to Members of the Consortium the License to use such rights for the Fee, as detailed in the attached Schedule(s), subject to the terms and conditions of this Agreement,

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

In this License, the following terms shall have the following meanings:

Member	BC ELN partner or member library participating in a license, as detailed in the attached Schedule(s).
Authorized Users	All current students, staff, and faculty of the Member, whether part-time, full-time, permanent, contract, adjunct, or Visiting; and retired faculty and staff with Emeritus, or equivalent status. Additional groups of Authorized Users (e.g. alumni) may be included, with the agreement of both Licensor and Consortium. Details about any additional groups of Authorized Users and applicable fee(s), if any, will be included in the attached Schedule(s).
Walk-In Users	Individual members of the public are considered Walk-In Users, with rights to Access and Use the Licensed Materials under the Fair Dealing provisions of the Canadian Copyright Act, while they are physically on the premises of a Member. For the avoidance of doubt, Walk-In Use is intended for individual users, not as a substitution for a license by another institution.

Licensed Materials The electronic materials as detailed in the attached Schedule(s).

2. LICENSE GRANT

- 2.1 The Licensor hereby grants to the Members of the Consortium, subject to and in accordance with the terms of this License, a non-exclusive license to access and use the Licensed Material at the sites of Members or remotely, through secure authentication.
- 2.2 In consideration for the Licensor's licensing of the Products and/or Services listed in the Addenda, the Consortium undertakes to pay to the Licensor the Fee in accordance with the provisions of the attached Schedule(s).

3. PERMITTED USES

- 3.1 Members may allow Authorized Users to:
- 3.1.1 ACCESS and USE the Licensed Materials from the premises of the Participating Member, or remotely via secure authentication, in order to search, retrieve, display and view the Licensed Material.
- 3.1.2 CREATE PERSISTENT LINKS to individual articles for access by Authorized Users for Permitted Uses under this Agreement, from within secure authentication environments provided that the product(s) support the ability of such persistent link technology.
- 3.1.3 INTERLIBRARY LOAN by paper or electronic means, a single copy of an individual document within the guidelines of traditional interlibrary loan practices and applicable copyright laws provided that the loan is not done in a manner or magnitude that would replace the recipient library's own subscription to either the Products or the purchase of the underlying Work (e.g., newspaper, magazine, or book).
- 3.1.4 SCHOLARLY SHARING. Authorized Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use provided that in no case any such sharing is done in a manner or magnitude as to act as a replacement for the recipient's or recipient institution's own subscription to either the Products or the purchase of the underlying Work.

- 3.1.5 FAIR DEALING / CREATIVE COMMONS. Nothing in this agreement restricts the rights of Authorized Users under the doctrine of "fair dealing" as defined under the laws of Canada, or as permitted under Creative Commons licensing.
- 3.1.6 ALTER or MODIFY the Licensed Materials as necessary to provide an equivalent level of service to Authorized Users with appropriately documented print or other disabilities. Any Materials altered in this manner will include the wording of any copyright notice, or other notices or disclaimers, as provided on the original. For the avoidance of doubt, a brief note to the effect that usage of the Materials is limited according to Copyright law and this license, with a link to the full notice, is acceptable.
- 3.1.7 COURSEPACKS / ELECTRONIC RESERVES / VIRTUAL LEARNING. Members and Authorized Users may incorporate a reasonable portion of the Licensed Material in course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network (only accessible to Authorized Users by Secure Authentication) so long as a "hit" is registered on Licensor's on-line platform each time an article is accessed for the CoursePack. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Copies of such items shall be deleted by the Member when they are no longer used for such purpose. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorized Users.

If the Licensor does not have the right to grant all rights under 3.1.8, these rights will apply exclusively to the content for which the Licensor does have such rights, as specified in the attached Schedule(s).

- 3.1.8 FEDERATED SEARCH. Members and Authorized Users may include the Licensed Material in federated or metasearch services provided that such searching does not impede Licensor's systems or servers.
- 3.1.9 DATA and TEXT MINING is not covered under this license agreement. On a project-by-project basis, ProQuest will use reasonable efforts to work with Members and Authorized Users to obtain permission from the Publisher for an academic research project requiring data and text mining.

4. PROHIBITED USES

- 4.1 COMMERCIAL USE.** Use of the Licensed Materials for the purposes of monetary reward (whether by the Consortium, Authorized Users or Walk-in Users) by means of sale, resale, loan, transfer, hire or other form of exploitation. For the avoidance of doubt, recovery of direct costs incurred by the Member in

the course of providing access to Authorized Users or Walk-in Users (e.g. printing, photocopying, or administration fee), is not deemed to be Commercial Use.

- 4.2 SUBSTITUTION FOR LICENSE.** No provision of this Agreement is intended to provide such substantial use as to constitute a substitution for an institutional license by a third party institution. For example, Walk-In User rights are designed for the provision of services to individuals, not blanket rights for all of the users of another institution.

5. THE LICENSOR'S UNDERTAKINGS

The Licensor shall:

- 5.1 Use reasonable efforts to make the Licensed Materials available to the Consortium and Authorized Users at all times and on a twenty-four hour (24) basis, save for routine maintenance but only at such times as demand for access to Licensed Materials is relatively low (which shall be notified to the Consortium in advance whenever possible), and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service directly attributable to the Server, the Licensor's local network, and/or the Licensor's Internet Service Provider. In the event the on-line Product is unavailable due to circumstances within Licensor's reasonable control for a period of 24 hours, not including times scheduled for normal systems maintenance and upgrades as described above, the subscription terms shall be extended one day (24 hours).
- 5.2 Announce any substantial additions, deletions, or modifications of information, databases, materials, capabilities or services within the Products on Licensor's electronic mailing list service. Failure by the Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by the Consortium. If any modifications render the Licensed Materials less useful to the Consortium or its Members, the Consortium may treat such modifications as a material breach under sections 7.2 and 7.3 of this Agreement
- 5.3 Give prompt notice to the Consortium of any significant change in business model with implications for the costs of the Members and revenue for the Licensor, including any optional open access model allowing Authors who are also Authorized Users to make their work openly accessible, for a fee.
- 5.4 Notice of the Use of Digital Rights Management Technology
In the event that Licensor utilizes any type of digital rights management technology to control the access to usage of Licensed Materials, Licensor agrees to notify Licensee of the name, contact information and any technical specifications for the digital rights management technology utilized. In no event may such Digital Rights Management Technology be used in such a way as to

limit the usage rights of a Licensee or any authorized user as specified in this agreement or under applicable law.

5.4 Notice of the Use of Digital Watermarking Technology

If Licensor utilizes any type of digital watermarking technology for any element of the Licensed Materials, Licensor agrees that watermarks will not be visible to the human eye and will not degrade image quality. These watermarks shall not contain information pertaining to Authorized Users such as account numbers or IP addresses. If digital watermarking technology is used, Licensor agrees to notify the Licensee, in advance, of the name, contact information, and any technical specifications for the technology used.

6. THE CONSORTIUM'S UNDERTAKINGS

The Consortium and each Member shall:

- 6.1 Use reasonable efforts to ensure that access is restricted to Authorized Users, and that Authorized Users are made aware of, and comply with, the terms and conditions of this Agreement.
- 6.2 In the event the Consortium receives information about a breach of any term of this Agreement by a Member, promptly enter into discussions with the Member and use reasonable efforts to convince the Member to rectify the breach. The Consortium shall also concurrently notify the Licensor at the same time as it enters into discussions with the Member.

7. TERM AND TERMINATION

- 7.1 This Agreement shall commence on the date indicated on the first page of this Agreement, and shall apply to all Licensed Materials for the time period(s) as indicated on the attached Schedule(s). Subscriptions as indicated on the attached Schedule(s) will automatically terminate at the end of the subscription period unless both parties have previously agreed to renew the subscription.
- 7.2 In the event that either party believes that the other materially has breached any obligations under this Agreement, such party shall notify the breaching party in writing. The breaching party shall have 30 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 30-day time period, the non-breaching party shall have the right to terminate the Agreement without further notice.
- 7.3 In the event of early termination permitted by this Agreement, the Consortium shall be entitled to a refund of any fees or pro-rata portion thereof paid by the

Consortium for any remaining period of the Agreement from the date of termination. This paragraph is invalid if the Consortium commits a willful, material and consistent breach of the terms of this Agreement, and fails to remedy the breach within thirty (30) days of notification by the Licensor.

7.4 The Licensor hereby grants to the Consortium and its Members a nonexclusive, royalty-free, license to use all material added to the Licensed Materials to which the Consortium subscribed during the term of this Agreement. Usage of materials acquired in this fashion shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement.

7.5 **Funding Contingency**
If public funding of the Consortium or funding of the Consortium by the Members is materially reduced and the Consortium thereby becomes unable to pay future amounts payable pursuant to this Agreement, the Consortium may give the Licensor written notice of termination and this Agreement shall terminate effective 30 days after the giving of such notice if the Consortium has failed to pay the Fee for the calendar year in which such notice was given, or if the Consortium has paid the Fee for the calendar year in which such notice was given, January 1 of the following year.

8. GENERAL

8.1 **Warranty and Indemnification.** The Licensor warrants that it holds the rights granted under this Agreement, and indemnifies and holds the Consortium harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Consortium or any of its Members claiming actual or alleged infringement of such rights, provided that you have given Licensor 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 Licensor shall control the defense of any such suit. Licensor 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 Licensor 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.

8.2 This Agreement and attached Schedule(s) signed by Licensor and Consortium shall comprise the complete terms and conditions of use. On occasion, individual content licensors may have conditions of use applicable solely to their content. Links to such content-specific conditions are clearly displayed with the associated

- content and will not materially alter Consortium or Member use of the products. With respect to third party databases purchased and delivered through the Illumina platform, any supplemental terms and conditions are clearly hypertext linked on each search screen. If there is a "click-through" agreement for users, this Agreement shall override the "click-through" agreement.
- 8.3 Alterations to this Agreement and to the Schedules to this Agreement are only valid if they are recorded in writing and signed by both parties.
- 8.4 Assignment. This Agreement may not be assigned by either party to any other person or organization without the prior written consent of the other party, nor may either party sub-contract any of its obligations, except as provided in this Agreement in respect of the management and operation of the Server and the Licensor's Representative, without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 8.5 Notice. Any notices to be served on either of the parties or on a Member by the other shall be sent by registered mail, courier or facsimile to the address of the other as its address for service of notices. Any such notice sent by registered mail shall be deemed to have been given 14 days after the date of posting the mail. Any such notice sent by courier or by facsimile shall be deemed to have been given on the date of receipt of the courier or facsimile.
- 8.6 Force Majeure. Neither party's nor a Member's delay or failure to perform any provision of this Agreement, as a result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, "denial of service" or similar attacks, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Agreement.
- 8.7 Waiver. Failure to enforce any provision of this Agreement shall not be construed to be a waiver of such provision.
- 8.8 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.
- 8.9 If the parties disagree over an interpretation of this Agreement or whether a party or a Member is in breach of any part of this Agreement, the parties and any such Member shall in good faith enter into negotiations to resolve the disagreement and discuss the feasibility of resolving the disagreement by mediation or other means short of litigation. The parties shall cooperate in good faith in pursuing mediation or other such means.
- 8.10 This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia, and the laws of Canada applicable therein,

including the BC Freedom of Information and Protection of Privacy Act, and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the courts of British Columbia and Canada.

AS WITNESS the hands of the parties the day and year below first written

Accepted:

FOR ProQuest LLC:

FOR THE CONSORTIUM: **BC ELN**

Name: _____

Name: Anita Cocchia

Position /
Title: _____

Position / Title: Executive Director

Signature: _____

Signature: _____

Date: _____

Date: _____

SCHEDULE 1

**LICENSED MATERIALS, SUBSCRIPTION PERIOD, FEE SCHEDULE,
TECHNICAL AND LICENSE SPECIFICATIONS, AND MEMBERS OF THE
CONSORTIUM**

Licensed Material:

Subscription Period:

Fee - Total:

Fee Structure:

Access details and special considerations:

Please check all that apply, and note any specific conditions not included in the Agreement:

Prorating of Fees as per Fee Structure above for new subscribers

ILL _____

Persistent Links to individual articles from within secure authentication environment(s) restricted to Authorized Users can be included in Coursepacks, E-Reserves, and Virtual Learning Environments

Limited portions of the Licensed Material may be included in Coursepacks, E-Reserves, and Virtual Learning Environments, with acknowledgement of the Source

List any addition special details e.g. on usage statistics, training, OpenURL / DOI Compliance, title lists.

Participating Libraries:

A schedule dated _____ to the Agreement dated _____ between
[name of Licensor] and the British Columbia Electronic Library Network.

Accepted:

FOR THE LICENSOR: **ProQuest LLC**

Name: _____

Position / Title: _____

Signature: _____

Date: _____

FOR THE CONSORTIUM: **British Columbia Electronic Library Network**

Name: _____

Position / Title: _____

Signature: _____

Date: _____