

Tre Hargett, Secretary of State
State of Tennessee



Tennessee State Library and Archives
403 7th Avenue North
Nashville, TN 37243-1409

Charles Sherrill
State Librarian and Archivist

615-741-7996
Chuck.Sherrill@tn.gov

MEMORANDUM

To: Fiscal Review Committee

From: Charles A. Sherrill, State Librarian and Archivist *CS*

Date: March 19, 2019

Subject: Request for review – ProQuest HeritageQuest, Amendment 1 to Contract 51219

Attachment: 1 contract amendment and corresponding documentation

CC: Comptroller of the Treasury
Chief Procurement Officer

The Tennessee State Library and Archives requests review and approval of an amendment to the contract 51219 between the state and ProQuest LLC to extend access to the HeritageQuest database in the Tennessee Electronic Library by an additional year. This contract provides access to the unique content provided in HeritageQuest for all residents of Tennessee. HeritageQuest's unique information includes local and family histories, bank records, Congressional reports, memorials, and petitions as well as the U. S. Federal Census Records from 1790 to 1940 (the most current available).

If you need any further information or clarification, please contact me.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Renee Register	*Contact Phone:	615-253-3462		
*Presenter's name(s):	Chuck Sherrill, Mary Beth Thomas				
Edison Contract Number: <i>(if applicable)</i>	Current contract: 51219	RFS Number: <i>(if applicable)</i>	30501-02319		
*Original or Proposed Contract Begin Date:	August 1, 2016	*Current or Proposed End Date:	June 30, 2019		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	July 1, 2019				
*Department Submitting:	Department of State				
*Division:	Tennessee State Library and Archives				
*Date Submitted:	March 20, 2019				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	ProQuest LLC				
*Current or Proposed Maximum Liability:	\$615,428				
*Estimated Total Spend for Commodities:					
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 2017	FY: 2018	FY: 2019	FY:2020	FY	FY
\$187,573	\$210,765	\$217,090	\$223,605	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY: 2017	FY: 2018	FY: 2019	FY:	FY	FY
\$187,573	\$210,765	\$108,545	\$0	\$0	\$0
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:			
State:	\$839,033.00	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		Sole Source	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		\$615,428.00 for 3 year contract. The costs were provided by the vendor and compared to the current costs of the service and found to be comparable.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		ProQuest LLC is the sole provider for database access to HeritageQuest.	

Amendment Request

This request form is not required for amendments to grant contracts. Route a completed request, as one file in PDF format, via e-mail attachment sent to: AgSprs.Agsprs@tn.gov

APPROVED

CHIEF PROCUREMENT OFFICER

DATE

Agency request tracking #	30501-02319	
1. Procuring Agency	Tennessee State Library and Archives	
2. Contractor	ProQuest LLC	
3. Edison contract ID #	51219	
4. Proposed amendment #	1	
5. Contract's Original Effective Date	August 1, 2016	
6. Current end date	June 30, 2019	
7. Proposed end date	June 30, 2020	
8. Current Maximum Liability or Estimated Liability	\$ 615,428.00	
9. Proposed Maximum Liability or Estimated Liability	\$ 839,033.00	
10. Strategic Technology Solutions Pre-Approval Endorsement Request – information technology service (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
11. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
12. Human Resources Pre-Approval Endorsement Request – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Explain why the proposed amendment is needed	To extend statewide online access to <i>HeritageQuest</i> by one year.	
14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract.		

Agency request tracking #	30501-02319
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)  	

PC



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 30501-02319	Edison ID	Contract # 51219	Amendment # 1		
Contractor Legal Entity Name ProQuest LLC			Edison Vendor ID 24409		
Amendment Purpose & Effect(s) Extend statewide online access to <i>HeritageQuest</i> by one year.					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: 06/30/2020			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 223,605.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2017	187,573.00				187,573.00
2018	210,765.00				210,765.00
2019	217,090.00				217,090.00
2020	223,605.00				223,605.00
TOTAL:	839,033.00				839,033.00
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations. 				CPO USE	
Speed Chart (optional) SS00000092		Account Code (optional) 72203000			

**AMENDMENT ONE
OF CONTRACT 51219**

This Amendment is made and entered by and between the State of Tennessee, Office of the Secretary of State, Tennessee State Library and Archives, hereinafter referred to as the "State" and ProQuest LLC, hereinafter referred to as the "Contractor," and amends the contract entered into by the parties for the provision of statewide access to HeritageQuest, effective August 1, 2016 (State Contract 51219). For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section B.1. is deleted in its entirety and replaced with the following:
 - B.1. This contract shall be effective on August 1, 2016 ("Effective Date") and extend for a period of forty-seven (47) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
2. Contract section B.2. is deleted in its entirety and replaced with the following:
 - B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the state, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
3. Contract section C.1. is deleted in its entirety and replaced with the following:
 - C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Eight Hundred Thirty-Nine Thousand Thirty-Three Dollars (\$839,033.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective July 1, 2019. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

PROQUEST LLC:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

TENNESSEE STATE LIBRARY AND ARCHIVES:

CHARLES A SHERRILL, STATE LIBRARIAN AND ARCHIVIST

DATE

TENNESSEE DEPARTMENT OF STATE, OFFICE OF THE SECRETARY OF STATE:

TRE HARGETT, SECRETARY OF STATE

DATE



CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date 08/01/2016	End Date 06/30/2019	Agency Tracking # 30504-02516	Edison Record ID 51219
Contractor Legal Entity Name ProQuest LLC			Edison Vendor ID 24409

Goods or Services Caption (one line only)
Statewide online access to HeritageQuest

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2017	187,573.00				187,573.00
2018	210,765.00				210,765.00
2019	217,090.00				217,090.00
TOTAL:	615,428.00				615,428.00

Contractor Ownership Characteristics:

- Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American
- Woman Business Enterprise (WBE)
- Tennessee Service Disabled Veteran Enterprise (SDVBE)
- Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.
- Other: Not Minority or Disadvantaged

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

- Competitive Selection
- Other: ProQuest is the only vendor with database access to HeritageQuest.

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

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Speed Chart (optional) SS00000092	Account Code (optional) 72203000
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
OFFICE OF THE SECRETARY OF STATE,
TENNESSEE STATE LIBRARY AND ARCHIVES
AND
PROQUEST LLC**

This Contract, by and between the State of Tennessee, Office of the Secretary of State, Tennessee State Library and Archives ("State") and ProQuest LLC ("Contractor"), is for the provision of statewide access to HeritageQuest, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation.

Contractor Place of Incorporation or Organization: 789 East Eisenhower Parkway, Ann Arbor, Michigan, 48106-1346.

Contractor Edison Registration ID # 24409

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Tennessee Electronic Library (TEL) seeks to acquire access to HeritageQuest, a collection of American genealogical and historical primary sources. Subject to *ProQuest Electronic Products License Agreement*, Terms and Conditions, Section 6, this access will include local and family histories, bank records, Congressional reports, memorials, and petitions as well as the U. S. Federal Census Records from 1790 to the most current available. A complete description of HeritageQuest is available at <http://www.proquest.com/products-services/HeritageQuest-Online.html>.
- A.3. Access to the service must be available twenty-four (24) hours a day, seven (7) days a week with notice given to the State if scheduled downtime is to occur. Scheduled downtime must be minimal.
- A.4. Participating institutions use a variety of protocols to access electronic materials, but the World Wide Web (HTTP protocol) is the preferred method of access.
- A.5. Access will be provided to all residents of Tennessee, including students, faculty, and staff of K-12 public and private schools; students, faculty, staff, and patrons of public and private academic institutions; patrons and staff of public libraries; and clientele and staff of not-for-profit special libraries. This will translate into a variety of access options from remote access for academic and school students through a campus network to dial-up access through commercial internet service providers (ISPs) for home access.
- A.6. The State contracts with a third-party vendor for geo-location authentication services. The Contractor will be required to participate in this authentication mechanism.
- A.7. The Contractor will be provided a list of TEL libraries and the Contractor will provide any technical expertise necessary to establish any additional authentication mechanisms. To see a list of current TEL access points, please see <http://www.tntel.tnsos.org>. After the initial authentication process, the Contractor will authenticate additional libraries within five (5) days of notification by the Tennessee State Library and Archives (TSLA) that the library or library system is eligible.
- A.8. Subject to *ProQuest Electronic Products License Agreement*, Terms and Conditions, Section 9, the patron interface will allow searching via standard library search strings as well as an advanced search feature.

- A.9. The Contractor must provide routine statistical reports as well as the capability to run reports on an as-needed basis. These reports must be configurable to run on consortium and individual library levels.
- A.10. Requested services should include unlimited simultaneous remote and on-site access for all eligible libraries, networks, and systems.
- A.11. The Contractor must provide and maintain institutional and consortial confidentiality and user confidentiality and privacy. Contractor's Privacy Policy is available at <http://www.proquest.com/about/privacy-statement.html>.
- A.12. The Contractor must provide advance notification of changes in each of the databases, including notices of changes in system design, scheduled downtime, additions and deletions of titles, full-text coverage, etc.
- A.13. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the Term of this Contract including applicable Term Extensions. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective on August 1, 2016 ("Effective Date") and extend for a period of thirty-five (35) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Six Hundred Fifteen Thousand Four Hundred Twenty-Eight Dollars (\$615,428.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

Quarterly Fee	Year 1 FY 2016/2017 (11 months)	Year 2 FY 2017/2018	Year 3 FY 2018/2019	Optional Year 1 FY 2019/2020	Optional Year 2 FY 2020/2021
Quarterly Fee for Access to HeritageQuest	\$46,893.25 / quarter	\$52,691.25 / quarter	\$54,272.50 / quarter	\$55,901.25 / quarter	\$57,578.75 / quarter

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Erin Loree
 TEL Administrator
 Tennessee State Library and Archives
 403 7th Avenue North
 Nashville, TN 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
 - (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Office of the Secretary of State, Tennessee State Library and Archives;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
 - (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;

- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Erin Loree, TEL Administrator
Tennessee State Library and Archives
403 7th Avenue North

Nashville, TN 37243
erin.loree@tn.gov
Telephone # 615-532-4627
FAX # 615-532-9904

The Contractor:

Dawn Branham, Senior Manager, Global Customer Support
ProQuest LLC
780 East Eisenhower Parkway
Ann Arbor, MI 48106-1346
dawn.branham@proquest.com
Telephone # 800-521-0600, ext. 72447
FAX # 734-997-4210

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount. Early termination of this Agreement as a result of non-appropriation of funds shall not obligate Contractor to refund any pre-paid fees.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract. Early termination of this Agreement for Customer's convenience shall not obligate Contractor to refund any pre-paid fees.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written

approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment One, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal

Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

In no event shall Contractor or its licensors be liable to State or its authorized users for

- a. Any claim related to State's or its authorized users' use of cover images or user-generated content provided as part of the service; or
- b. Unauthorized use of the service.

D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

D.20. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

D.21. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

D.22. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- D.23. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.24. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.25. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.26. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.27. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.28. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.29. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;

- b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment One and Attachment Two, ProQuest Electronic Products License Agreement;
- c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
- e. any technical specifications provided to proposers during the procurement process to award this Contract; and
- f. the Contractor's response seeking this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

E.2. Ownership of Software and Work Products.

a. Definitions.

- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," shall mean software not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other

documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.

(3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted under this Contract.

c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

E.3. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

IN WITNESS WHEREOF,

PROQUEST LLC:

Dawn Branham

28 Jul 2016

CONTRACTOR SIGNATURE
Dawn Branham
Sr. Manager, Customer Support

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE STATE LIBRARY AND ARCHIVES:

C Sherrill

7/29/16

CHARLES A. SHERRILL, STATE LIBRARIAN AND ARCHIVIST

DATE

TENNESSEE DEPARTMENT OF STATE, OFFICE OF THE SECRETARY OF STATE:

The Hargett by Margaret Travers, FOIA
TRE HARGETT, SECRETARY OF STATE

7/29/16
DATE

JCC

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	30504-02516
CONTRACTOR LEGAL ENTITY NAME:	ProQuest LLC
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	██████████

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Dawn Branham
Sr. Manager, Customer Support

PRINTED NAME AND TITLE OF SIGNATORY

28 JUL 2016

DATE OF ATTESTATION

ATTACHMENT TWO

License Agreement consists of:
 ProQuest Customer Order Form
 Terms and Conditions 06012014
 Addenda (if applicable)



789 Eisenhower Parkway
 Ann Arbor, MI 48106-1346
 800-521-0600

By agreeing to this Electronic Products License Agreement and any Addenda attached hereto with your signature below, you are signing your agreement to ProQuest licensing you the product(s) listed below at the stated price(s) for the given period(s) under these terms and conditions and you certify that you are authorized to enter into this Agreement on behalf of the Subscribing Institution.

<p>Subscribing Institution: Tennessee State Library & Archive (TEL)</p> <p>Authorization by Customer (Licensee):</p> <p>Signature: <u>Tire Hargett</u> Duly Authorized Signature <u>Tire Hargett</u></p> <p>Name: <u>Tire Hargett</u></p> <p>Title: <u>Secretary of State</u></p> <p>Date Signed: <u>7/29/16</u></p>	<p>Authorization by ProQuest LLC (Licensor):</p> <p>Signature: <u>Dawn Branham</u> Duly Authorized Signature</p> <p>Name: <u>Dawn Branham</u></p> <p>Title: <u>Sr. Manager, Customer Support</u></p> <p>Date Signed: <u>28 Jul 2016</u></p>
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System ID: Q-00113273

Product:	Product Acronym:	Start Date:	End Date:	Net Price:
Heritage Quest Online	HQO	8/1/2016	6/30/2017	187,573.00 USD
Total Amount:				187,573.00 USD

Product Notes:

Additional Information:

Billing Information: Please review your billing address to ensure its accuracy. Invoice Schedule: <i>Annually</i>	Shipping Information: If shipping address is the same as billing location:
LYRASIS 1438 W Peachtree St NW Ste 200 Atlanta GA United States 30309-2955	403 7th Ave N Nashville TN United States 37243-1409
If your subscribing institution requires the use of Purchase Orders, please indicate below. Purchase Order #	Tax Exempt #

Invoices will be emailed to the bill-to-contact and renewals will be emailed to the ship-to-contact. If your institution is unable to accept electronic invoices, please check this box:	To sign up for our auto-renewal program as part of our 'go green' initiative. Your subscription to the service will automatically renew for successive 12 month periods at the rate set forth in the renewal invoice sent to the Customer, unless Customer sends written cancellation notice to ProQuest within 30-days of the Customer's receipt of the renewal invoice, with such cancellation to be effective as of the end of the current subscription period, please check this box:
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Technical Contact:

Name:	Title:	Email:
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IP Authentication:	Barcode Scheme:	Additional Authentication Method:	LIBCODE
	Length: Prefix:		

Additional Sites:

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Account Manager Information:

Pam Shaloy - Account Manager, Senior
 (734) 997-4086
 pam.shaloy@proquest.com
 866-650-2915

Terms and Conditions

1. License Grant. Subject to the terms of this Agreement, ProQuest LLC and its affiliates ("ProQuest") hereby grant to Customer a non-exclusive, non-transferable license (the "License") for Customer and its Authorized Users to access and use the products and services listed on Customer's approved Order Form (the "Service") solely at Customer's principal location and those locations listed on the Additional Sites Schedule. Access and use of the Service is only for the internal, research purposes of Customer and/or its Authorized Users as further described in Exhibit A. Additional Sites may be added upon written notice to ProQuest and payment of additional fees, if applicable. Customer does not acquire any intellectual property ownership in the Service or any associated software, systems, documentation, content, other materials and/or improvements made thereto, including improvements based upon customer feedback. All such rights and interests remain in ProQuest and its licensors.
2. Authorized Users. "Authorized User" means only: (a) For public libraries: library staff, individual residents of Customer's reasonably defined geographic area served, and walk-in patrons while they are on-site; (b) For schools and other academic institutions: currently enrolled students, faculty, staff, and visiting scholars, as well as walk-in patrons while they are on-site; and (c) For other types of organizations: employees and independent contractors, while performing their work.

Authorized Users excludes Customer's corporate affiliates, academic bookstores, and alumni unless those users are expressly included and reflected on the Order Form or Additional Sites Schedule.

3. Secure/Remote Access. All access and use of the Service must be made via a secure network and secure authentication methods. Use of the Service by remote access is allowed unless otherwise stated on the Order Form. Customer will strictly limit any remote access to its Authorized Users through the use of secure methods of user verification. Customer will promptly notify ProQuest if Customer believes security has been compromised. Online posting of passwords, or otherwise enabling access for the benefit of non-subscribing institutions or users, is strictly prohibited.
4. Updates to the Service. ProQuest will announce any substantial modifications of information, databases, materials, capabilities, or services within the Service by email to Customer's representatives who sign up to receive updates. These changes shall be subject to the terms and conditions of this Agreement, and shall not materially alter use of the Service.
5. Supplemental Terms. Some of the content included in the Service has conditions of use applicable solely to such content. Links to content-specific conditions are clearly displayed with the associated content and will not materially alter use of the Service. Where third-party databases and certain special content types are subject to special terms, such terms and conditions shall be clearly referenced on the Order Form.
6. Variations in Content. The content provided as part of the Service is primarily owned and supplied to ProQuest under agreement with third party licensors, and is subject to the continuation and extent of the license granted under such agreements. ProQuest shall have the right, in its reasonable and good faith discretion, to remove or modify materials in the Service because (a) ProQuest's right to distribute such materials lapses, (b) such materials contain errors or could be subject to an infringement or other adverse claim by a third party, or (c) particular content collections have changed due to editorial selection, coordination, or arrangement of materials.
7. Fees and Payments. Customer agrees to pay the fees for the Service shown on the Order Form within 30 days of receipt of ProQuest's invoice unless otherwise specified on the Order Form. Fees are based in part on Customer's population served, Authorized Users and Additional Sites at the time of the order. If any combination of these elements materially increases (e.g., if the Customer acquires a new affiliate), a fee increase commensurate with such change may be required before access and use of the Service is provided to or for the benefit of the additional user population, Authorized Users and/or Additional Sites. Firm U.S. Government orders require a valid purchase order and advance payment or payment in accordance with FAR 52.213.2.
8. U.S. Government Restricted Rights. Services 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 LLC, 789 E. Eisenhower Parkway, Ann Arbor, MI 48108. 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 SUBPART 252.227-7202-3 (December 2011) Rights in Computer Software and Computer Software Documentation and/or subject to the restrictions of DFARS 252.227-7019 (Sep 2011) 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 (December 2007) Rights in Data-General, FAR 52-227-20(c)(2-3) (December 2007) Rights in Data-SBIR Program and/or subject to the restricted rights provisions of FAR 52.227-15 (December 2007) Representation of Limited Rights Data and Restricted Computer Software and FAR 52.227-19 (Dec 2007) Commercial Computer Software-Restricted Rights, as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurement.
9. Term. Customer's access to a particular Service shall continue for the period on the Order Form, plus any agreed renewal period(s). This Agreement shall continue in force for so long as Customer subscribes to at least one Service. Thereafter, the following survive: Sections 9 and 12-15, and any "PAL" perpetual licenses (subject to all relevant use restrictions and security requirements).
10. Termination for Breach. If a party breaches a material term of this Agreement and does not cure within 30 days from written notice, the other party may immediately terminate this Agreement in whole or as to the affected Service. If this Agreement is terminated in whole or in part for Customer's breach, (a) ProQuest shall disable access to any terminated Service, (b) Customer shall destroy any files, information, data or software derived from any terminated Service in its possession or control, and certify destruction upon request, and (c) ProQuest reserves the right to pursue all available legal remedies.

11. Remedial Action. Without limiting the above, ProQuest may suspend delivery of the Service if it reasonably determines that Customer's or Authorized User's failure to comply with this Agreement may cause irreparable harm to it or its licensors. If delivery is suspended, ProQuest will work in good faith to restore Customer's access as soon as possible.
12. Service Level. If the Service or content are hosted by ProQuest, ProQuest will use commercially reasonable efforts to provide access to the Service on a continuous 24/7 basis (except for regularly scheduled maintenance) and free from viruses or other harmful software. ProQuest shall not be liable for any failure or delay or interruption in the Service or failure of any equipment or telecommunications resulting from any cause beyond ProQuest's reasonable control. Customer is responsible for providing all required information for account set up and activation, and for its own telecommunications connections and related third-party charges.
13. Limited Warranty and Disclaimer of Warranty. ProQuest warrants that the Service will perform substantially as documented on ProQuest's public websites (the "ProQuest Websites"). EXCEPT AS EXPRESSLY WARRANTED HEREIN, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE." PROQUEST AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE PERTAINING TO: MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ACCURACY, TIMELINESS, CORRECTNESS, RELIABILITY, CURRENCY, OR COMPLETENESS OF THE SERVICE OR ANY INFORMATION OR RESULTS OBTAINED THROUGH THE SERVICE, EVEN IF ASSISTED BY PROQUEST. PROQUEST SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR DETERMINING THE COMPATIBILITY OF ANY HARDWARE OR SOFTWARE NOT SUPPLIED BY PROQUEST WITH THE SERVICE AND PROVIDES NO WARRANTY WITH RESPECT TO THE OPERATION OF SUCH HARDWARE OR SOFTWARE WITH THE SERVICE.
14. Limitation of Liability.
 - a. ProQuest shall indemnify and hold Customer harmless from liability for all costs or damages incurred by Customer in any action or threatened action for infringement of an intellectual property right of a third party, relating to or caused by the Service in the form in which it is furnished hereunder, provided that Customer gives ProQuest notice of any suit or threatened suit for infringement brought within twenty (20) days of the day of service of the complaint upon Customer or from the receipt by Customer 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 Service in combination with programs, equipment or devices not of ProQuest origin, design or selection; or (ii) any infringement or violation claim arises out of use of the Service in a manner contrary to the rights granted in this Agreement, including use contrary to the Copyright Act of 1976, Title 17 U.S.C. or other intellectual property law.
 - b. THE MAXIMUM LIABILITY OF PROQUEST AND ITS LICENSORS ARISING OUT OF ANY CLAIM RELATED TO THE SERVICE OR THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES RECEIVED BY PROQUEST FROM CUSTOMER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL PROQUEST OR ITS LICENSORS BE LIABLE TO CUSTOMER OR ITS AUTHORIZED USERS FOR (a) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES; OR (b) ANY CLAIM RELATED TO CUSTOMER'S OR ITS AUTHORIZED USERS' USE OF COVER IMAGES OR USER-GENERATED CONTENT PROVIDED AS PART OF THE SERVICE; OR (c) UNAUTHORIZED USE OF THE SERVICE.
15. Place. ProQuest's principal place of business, where this contract is formed and all services will be deemed performed, is 789 E. Eisenhower Pkwy, Ann Arbor, MI 48108.
16. Entire Agreement. This Agreement consists of the Order Form, these Terms and Conditions, and Exhibit A, and constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes all previous and contemporaneous agreements between the parties with respect to the same subject matter and may not be amended, except in a writing signed by the parties. The terms of Customer's purchase orders, if any, are for Customer's convenience and do not supersede any term or condition of this Agreement.

Exhibit A: Permitted Uses

1. Online Research Services. Services designed to facilitate online research may be used for Customer's internal research or educational purposes as outlined below provided that doing so does not violate an express provision of this Agreement:
 - a) Research and Analysis. Customer and its Authorized Users are permitted to display and use reasonable portions of information contained in the Service for educational or research purposes, including illustration, explanation, example, comment, criticism, teaching, or analysis.
 - b) Digital and Print Copies. Customer and its Authorized Users may download or create printouts of a reasonable portion of articles or other works represented in the Service (i) for its own internal or personal use as allowed under the doctrines of "fair use" and "fair dealing; (ii) when required by law for use in legal proceedings or (iii) to furnish such information to a third party for the purpose of, or in anticipation of, regulatory approval or purpose provided that the recipient are advised that the copies are confidential and not for redistribution. All downloading, printing and/or electronic storage of materials retrieved through the Service must be retrieved directly from the on-line system for each and every print or digital copy.
 - c) Electronic Reserves, Coursepacks, and Intranet Use. Provided that Customer does not circumvent any features or functionality of the Service, Customer may include durable links to articles or other works (or portions thereof) contained in the Service in electronic reserves systems, online course packs and/or intranet sites so long as access to such materials are limited to Authorized Users.
 - d) Fair Use/Fair Dealing. Customer and its Authorized Users may use the materials contained within the Service consistent with the doctrines of "fair use" or "fair dealing" as defined under the laws of the United States or England, respectively.
 - e) Academic Institutions, Schools, and Public Libraries. If Customer is an academic institution, school, or public library:
 - i. Interlibrary Loan (ILL). Library Customer may loan digital or print copies of materials retrieved from the Service to other libraries, provided that (i) loans are not done in a manner or magnitude that would replace the receiving library's own subscription to the Service or purchase of the underlying work (e.g., newspaper, magazine, book), (ii) Customer complies with any special terms governing specific content or licensors as described in this Agreement, (iii) with respect to e-books, copying is limited to small portions of a book, and (iv) Customer complies with all laws and regulations regarding ILL.
 - ii. Scholarly Sharing. Customer and its Authorized Users may provide to a third party colleague minimal, insubstantial amounts of materials retrieved from the Service for personal use or scholarly, educational research use in hard copy or electronically, 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 educational institution's own subscription to either the Service or the purchase of the underlying work.
2. MARC Records. MARC records may be placed in Customer's online public access catalog (OPAC) or shared online catalog (e.g., WorldCat) unless otherwise specified on the Order Form with respect to a particular Service.
3. Scholar/Researcher Profiles. The data contained within scholar profiles are for use in facilitating research and collaboration amongst colleagues. Neither Customer nor its Authorized Users may export or otherwise exploit the scholar profiles for mass mailings or similar marketing purposes.
4. Electronic Resource Discovery, Access, and Management. For electronic resource discovery (e.g., Summon), access and/or management services (e.g., Intota), the Customer reserves all right, title and interest in all Customer specific data it contributes to the Service (which may include but is not limited to Customer created metadata, bibliographic information, holdings and circulation data) and grants ProQuest permission to use such data for the limited purpose of operating and improving the Service and such information may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party without Customer's permission. Provided that such access, use, and/or sharing does not violate an express provision of this Agreement, Customer and its Authorized Users are permitted to: (a) access the Service and information derived from the Service in order to discover, manage and provide access to library resources owned or licensed by Customer, (b) create, store and retain any reports and lists delivered by the Service, (c) share data about Customer's own library holdings that is retrieved from such Service with third party applications, so long as prior written notice is provided to ProQuest and (d) display metadata, bibliographic and holdings information in the library catalog available on Customer's library website.
5. Library Catalog Enrichment Service. For library catalog enrichment Services (e.g., Syndetics), Customer may use the enrichment elements for the sole purpose of augmenting Customer's own library OPAC or website. Customer may not convert

Service metadata records into MARC format, nor distribute or display the enrichment elements in any third party applications, catalogs or websites.

6. Purchased Content. For perpetual archive licenses ("PAL") (as specified on the ProQuest Websites or Order Form), Customer pays a one-time fee for a perpetual license to the designated materials (the "Purchased Content"), and an annual "Continuing Service Fee."
 - a) Perpetual License. The License to Purchased Content and any updates Customer receives is perpetual, and may only be revoked if Customer materially breaches this Agreement, or if the licensed materials contain errors or could be subject to an infringement or other adverse claim by a third party.
 - b) Continuing Services. In consideration of the Continuing Service Fee, ProQuest will provide Customer and its Authorized Users with online access to the Purchased Content, plus any included updates, on a proprietary platform designed to enhance the research experience (a "ProQuest Platform"). ProQuest will maintain systems and technology that help Customer comply with use restrictions and security standards required by ProQuest's licensors.
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