**STATE OF TEXAS** 

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COUNTY OF FORT BEND

## ADDENDUM TO ELECTRONIC PRODUCT LICENSE AGREEMENT

THIS ADDENDUM is entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and ProQuest, LLC, (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

THAT, WHEREAS, the parties have executed and accepted that certain Subscription and Hosting Services Agreement, (hereinafter the "Agreement"), attached hereto as Exhibit "A" and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

- 1. **Payment.** Payment shall be made by County within thirty (30) days of receipt of invoice.
- 2. **Non-appropriation.** It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County.
- 3. **Taxes.** County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.
- 4. Confidential Information. Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Contractor shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.
- 5. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Contractor for any reason are hereby deleted.

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- 6. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by Contractor in any way associated with the Agreement.
- 7. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.
- 8. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

	APPROVED BY LEGA
FORT BAND COUNTY	ProQuest, LLC
(Solut Jeleeb	DawnBranhain
Robert E. Hebert, County Judge	Authorized Agent-Signature
12-2-2014	Dawn Brankon
Date	Authoriz <b>Bdwig BranRain</b> ted Name Sr. Manager, Customer Support
ATTEST:	
1	Title
Hanne Thiloan	19-Nov-2014
Dianne Wilson, County Clerk	Date

## **AUDITOR'S CERTIFICATE**

the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

# **EXHIBIT A**

# **ELECTRONIC PRODUCT LICENSE AGREEMENT**

Electronio Product License Agreement consists of ProQuest Customer Order Farm USS2012011 Terms and Conditions USS2052014 actrary, EBL Addenda (if applicable) Additional StartMamber Library (Additional form if applicable)



Subscribing Institution: For	ort Bend County	Libraries		Authorization by Proquest LLC (Licensor):
Authorization by Customer (Liconsee): X				
	Ď	Ouly Authorized Confirmation (Signature)		Duly Authorized Signature
Name:			Name	8
Title:			Title:	c
Date:	***		Oate:	
******	Texas	77469		
agreeing to this El	lectronic Product	's License Agreement and any Addenda at	tached hereto with your signature above, you are	e signing your agreement to ProQuest Ilcensing you the product(s) listed below
the stated price(s)	for the given per	iod(s) under these terms and conditions a	and you certify that you are authorized to enter in	into this Agreement on behalf of the Subscribing Institution.

ORDER INFORMATION: ProQuest Products

Order Type	Product Name	Product Codes	Start Date (mm/yyyy)	End Date (mm/yyyy)	New/Renew/ Upgrade	# Simul. Users	Safari Slot Level	Price (USD)
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SUB	Ancestry Library	ANCLIB	01/2015	12/2015	Renew			\$6,005.00
SUB	CultureGrams Online	CLTGRMO	01/2015	12/2015	Renew			\$5,345.00
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rder Total		Page 1 of 4				Price (US	D):	11,350.00

ACCOUNT INFORMATION										
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To sign up for our new auto-renewa rate set forth in the renewal invoice with such cancellation to be effective	sent to Customer, unl	ess Customer sends a w	ritten cancell	ation notice to	Service will autor ProQuest within 3	matically renew 30 days of Cust	r for successive 12 month periods at the owner's receipt of the renewal invoice,			
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Attention.	Teresa ™niim				Attention:	Teresa Thiin	1			
Title:					Title:					
institution: Fort Bend County Libraries					: Fort Bend County Libraries					
Address:	Address: 1001 Golfview Dr.					1001 Golfview Dr.				
Address 2					Address 2					
City	Richmond					Richmond				
State/province:					State/province:					
Zip/Postal:	77469				Zip/Postal:	77469				
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if customer also has a RefWork										
RefWorks Group Code (optional)			,							
Sales Represen	tative information						***			
S	ales Representative;									
	Telephone:				-					
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Fax: \_\_\_\_

### 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 or 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 PreQuest 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 siler 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.
- 3. 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 52 243.2
- 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. Elsenhower Parkway, Ann Arbor, MI 49108. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data 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-Subject to the restricted rights provisions of FAR 52.227-15 (December 2007) Representation of Limited Rights Data and RAR 52-227-19 (December 2007) Representation of Limited Rights Data and PAR 52-227-19 (December 2007) Representation of Limited Rights Data and PAR 52-227-19 (December 2007) Representation of Limited Rights Data and PAR 52-227-19 (December 2007) Representation of Limited Rights Program and/or subject to the restricted Rights, as applicable, and any applicable agency FAR Supplements, for non-Decartment 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, date 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 narm 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 247 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 WARRANTIED HEREIN, THE SERVICE IS PROVIDED "AS IS" AND "AS VAILABLE." 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 IMPORMATION 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. 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 arrended, 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 perty 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 digitat 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 dectrines of "fair use" or "fair dealing" as defined under the laws of the United States or England, respectively.
  - e) Academic Institutions, Schools, and Pucilic 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 libensors 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 lews 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 mallings 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., intots), 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 Qustomer, (b) create, store and retain any reports and lists delivered by the Service. (c) share data about Customer's own library holdings that is refleved from such Service with third party applications, so long as prior written notice is provided to ProQuest and (c) 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 edverse 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 Furchesed 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.
  - c) File Delivery. If Customer loses the ability to access its Purchased Content online through ProQuest (e.g., if ProQuest discontinues online access services), or if the Purchased Content is otherwise eligible for local loading, Customer may obtain digital copies upon certifying that it will secure and restrict use of the Purchased Content as contemplated under this Agreement, using systems and technology at least as protective as ProQuest's, File transfer costs, if any, are Customer's responsibility.
  - d) Data Mining. Subject to any content-specific restrictions, Customer and its Authorized Users may extract and compile data from locally-loaded copies of the Purchased Content solely for Customer's teaching, learning, and research purposes.
- 7. Patron Driven Acquisition ("PDA"). For certain Services, Customer may elect to have user activity trigger the purchase of content. Purchase preferences and Service eligibility for the PDA model are described on the ProQuest Websites.
- 8. Analytics Some Services contain library collection analysis capabilities related to library holdings, or functionality that allows Authorized Users to create reports, lists, or alerts. Customer and Authorized Users may create, download, store and retain any such analytics or lists delivered by the Service. ProQuest may use library holdings and other information in the Service for comparison and metrics purposes in order to better understand the Customer's needs.
- 9. Restrictions. Except as expressly permitted above, Customer and its Authorized Users shall not:
  - a) Translate, reverse engineer, disassemble, decompile, discover, or modify ProQuest's software;
  - b) Remove any copyright and other proprietary notices placed upon the Service or any materials retrieved from the Service by ProQuest or its licensors;
  - c) Circumvent any use limitation or protection device contained in or placed upon the Service or any materials rotrieved from the Service,
  - d) Use the Service to execute denial of service attacks;
  - e) Perform automated searches against ProQuest's systems (except for non-burdensome federated search services), including automated "bots," link checkers or other scripts;
  - f) Provide access to or use of the Services by or for the benefit of any unauthorized school, library, organization, or user;
  - g) Publish, broadcast, self, use or provide access to the Service or any materials retrieved from the Service in any manner that will infringe the copyright or other proprietary rights of ProQuestion its licensors;
  - h) Use the Service to create products or perform services which compete or interfere with those of ProQuest or its licensors;
  - i) Text mine, data mine or harvest metadata from the Service:
  - j) Communicate or redistribute materials retrieved from the Service; or
  - k) Download all or parts of the Service in a systematic or regular manner or so as to create a collection of materials comprising all or a material subset of the Service, in any form.

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