

## Serials Solutions Terms and Conditions

If you are the representative of your institution or organization, all references to "you" in this Agreement refer to the entity that you represent. By accessing or using the product(s) you agree that you and your Authorized Users are bound by these terms and conditions.

1) **License:**

- a) Subject to the terms of this Agreement, Serials Solutions, a business unit of ProQuest Information and Learning Company ("Serials Solutions") hereby grants you a non-exclusive, non-transferable license to have access to and use the on-line or electronic format-based products and services including but not limited to any reports, updates and other materials provided by Serials Solutions to you as listed in the attached Term Sheet, attached invoice or accepted purchase order (the "Services"). You do not acquire any ownership interest or rights in the Services and associated materials and all such rights and interests remain in Serials Solutions and its licensors. This License is granted to you at your principal location for the type(s) of access as specified on the Term Sheet and any authorized sites or users as defined below.
- b) The Services are licensed solely for you and your Authorized Users' internal use. The term "Authorized User" means: (1) you at your principal location and any branch libraries that share a single collection of full-text electronic format journal holdings through a common database subscription; (2) you and any of your branch libraries that share identical access interfaces through the Services and (3) with respect to products intended for use directly by patrons, "Authorized Users" means employees, independent contractors and other temporary workers while performing duties within the scope of their employment or assignment with your organization as well as customary and usual library patrons. As used herein, the phrase "customary and usual library patrons" means - (a) for public libraries: library staff, individual residents of a reasonably defined geographic area in addition to walk-in patrons while on-site; and (b) for schools and academic institutions: currently enrolled students, faculty and staff in addition to walk-in patrons and visiting scholars while on-site. You may provide remote access to the Services to Authorized Users through the use of IP address verification or other secure method of user verification. You will immediately notify Serials Solutions if you believe one or more of your secure access method(s) is being misused.
- c) You will limit use to the customary services provided to your patrons and staff. Except for providing public access to your catalog holdings, you will not re-distribute the materials retrieved from the Services or provide access to the Services to other libraries or third parties either directly or indirectly, unless specifically authorized by Serials Solutions. You will not publish, broadcast or sell any materials retrieved through the Services or use the materials in any manner that will infringe the copyright or other proprietary right of Serials Solutions or its licensors. You represent and warrant to Serials Solutions that you will not use the Services or any material retrieved from the Services to create products or perform services which compete or interfere with the products or services of Serials Solutions or its licensors without express permission from Serials Solutions. You may not use the Services to execute denial of service attacks nor may you perform automated searches against Serials Solutions' systems to the extent such searches unduly burden such systems (including, but not limited to automated "bots", link checkers or other scripts). You may not use the Services to violate the terms and conditions of use applicable to other licensed databases.

- 2) **Services and Your Cooperation.** You will be responsible for cooperating with Serials Solutions by providing information that is reasonably necessary in order for Serials Solutions to deliver the Services or any component of the Services to you. Serials Solutions shall use this information solely to provide the Services to you and to inform you of additional or new Services available from Serials Solutions. You may make changes to the kinds of reports you receive by making adjustments within Serials Solutions' online client center. You may request modifications to the scope of any of the Services you receive by submitting your request to Serials Solutions in writing detailing your requested changes.

- 3) **Servers.** Serials Solutions will use commercially reasonable efforts to provide those products and services hosted on Serials Solutions' servers on a continuous basis and free from viruses or other harmful software. Neither Serials Solutions nor its licensors shall be liable or deemed in default of this Agreement for any failure or delay or interruption in the on-line Services or any failure of any equipment or telecommunications resulting from any cause or circumstance beyond the reasonable control of Serials Solutions.

- 4) **Fees and Payments.** You will pay the fees for the Services as shown on the applicable Term Sheet, attached invoice, or accepted purchase order. You will pay the fees for the Services within thirty (30) days of your receipt of the Serials Solutions invoice.
- 5) **Term and Termination.**
  - a) For subscription based Services, this Agreement shall continue until the Expiration Date listed on the Term Sheet, an attached invoice or an accepted purchase order to this Agreement or, if the subscription is renewed, until the new Expiration Date. The license granted under this Agreement shall continue for the term specified and terminate only upon your breach of this Agreement. Serials Solutions may suspend delivery of Services to you if you fail to comply with your obligations under this Agreement and Serials Solutions can pursue any other legal remedy available to it.
  - b) You may retain the most recent version of any data supplied in electronic format (whether FTP, CD-ROM or other form of delivery) to you during your subscription term. All use of the data after subscription expiration is subject to the license granted under this Agreement. If you breach any term of this Agreement, Serials Solutions may, in addition to its other legal rights and remedies, terminate the license granted and upon written notice of such termination you shall certify the destruction of all copies of the Product(s) in your possession, including the data as well as any downloaded copies of any reports, software or other materials provided by Serials Solutions.
- 6) **Proprietary Rights.** All intellectual property rights, including without limitation, trade secrets, copyrights and patent rights to any software, materials, databases or hardware supplied to you by Serials Solutions will remain the sole property of Serials Solutions or its licensors, and no title or license right is granted to you except as expressly set forth in this Agreement.
- 7) **Additional Materials.** From time to time during the term of this Agreement, Serials Solutions may add, delete or modify information, databases, materials, capabilities or services to the Services. All such information, databases, materials, capabilities and services shall be subject to the terms and conditions of this Agreement at the time they are added to the Services.
- 8) **Hardware and Software.**
  - a) Serials Solutions may designate that certain hardware and software are capable of operating compatibly with the Services, but such designation means only that the hardware or software appears to meet the necessary requirements of the Services. SERIALS SOLUTIONS SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR DETERMINING THE COMPATIBILITY OF ANY HARDWARE OR SOFTWARE NOT SUPPLIED BY SERIALS SOLUTIONS WITH THE PRODUCTS AND PROVIDES NO WARRANTY WITH RESPECT TO THE OPERATION OF SUCH HARDWARE OR SOFTWARE WITH THE PRODUCTS.
  - b) You are responsible for local telecommunication connections if they are needed and the charges therefore.
- 9) **Limited Warranty and Disclaimer of Warranty.** Serials Solutions warrants that it has all rights necessary to enter into this Agreement and to provide the Services to you.

EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, THE PRODUCTS AND ALL EQUIPMENT AND SOFTWARE PROVIDED BY SERIALS SOLUTIONS TO YOU ARE PROVIDED "AS IS" AND "AS AVAILABLE." THE WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR DAMAGE OR DELETED DATA FROM ANY LIBRARY OPAC OR OTHER SYSTEM. WITHOUT LIMITING THE FOREGOING, NEITHER SERIALS SOLUTIONS NOR ANY PROVIDER OF INFORMATION OR SOFTWARE IN THE PRODUCTS WARRANTS THE USE OF THE PRODUCTS OR THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR MAKES ANY WARRANTY AS TO THE AVAILABILITY OF THE PRODUCTS, THE ACCURACY, TIMELINESS OR COMPLETENESS OF THE INFORMATION OR THE RESULTS OF LICENSEE'S USE OF THE PRODUCTS, THE SOFTWARE OR THE PRODUCTS, EVEN IF ASSISTED BY SERIALS SOLUTIONS.
- 10) **Limitation of Liability.** THE MAXIMUM LIABILITY OF SERIALS SOLUTIONS AND ITS LICENSORS, IF ANY, UNDER THIS AGREEMENT, OR ARISING OUT OF ANY CLAIM RELATED TO THE PRODUCTS, FOR DIRECT DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES RECEIVED BY SERIALS SOLUTIONS FROM YOU HEREUNDER UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED. IN NO EVENT SHALL SERIALS

SOLUTIONS OR ITS LICENSORS BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES RELATED TO THE USE OF THE PRODUCTS OR SERIALS SOLUTIONS'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF WHETHER SERIALS SOLUTIONS OR ITS LICENSORS ARE NEGLIGENT. YOU ACKNOWLEDGE THAT THE FORGOING LIMITATION OF LIABILITY REPRESENTS BARGAINED-FOR ALLOCATIONS OF RISK, AND THAT SERIALS SOLUTIONS' FEES, CHARGES AND COSTS HEREUNDER REPRESENT ALLOCATIONS OF SUCH RISK.

11) **Miscellaneous.**

- a) **Assignment.** You may not assign this Agreement or any right granted hereunder without the prior written consent of Serials Solutions, which consent shall not unreasonably be withheld.
- b) **Taxes.** You are responsible for any sales, use, VAT, personal property or other local taxes (except those based on Serials Solutions' income) or import duties imposed on the Services.
- c) **Waiver.** Failure of either party to enforce at any time any of the provisions of this Agreement shall not be construed to be a waiver of such provisions or of the right of such party thereafter to enforce any such or other provisions of this Agreement.
- d) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes any and all previous and contemporaneous understandings or agreements between the parties with respect to the same subject matter. The terms of your Purchase Orders, if any, are for your convenience and do not supersede any term or condition of this Agreement.
- e) **Severability.** If any provision of this Agreement is found invalid or unenforceable pursuant to a decree or decision of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable according to its terms.
- f) **Governing Law.** The Agreement shall be construed according to the laws of the State of Michigan, without application of its conflict of laws provisions.
- g) **Effective Date.** This Agreement shall be effective on the Subscription Start Date listed on the Term Sheet or, for on-line Services, as of the first date on which access to any part of the applicable Services is provided to you, including the date upon which access is provided to you for the purposes of beginning any customization and/or implementation as may be necessary to allow use of the particular Service by or for the benefit of your Authorized Users.