

**Micromedia Limited**

***Canada's Heritage from 1844***

**Online Databases License Agreement**

**THIS LICENCE IS AGREED** the 15<sup>th</sup> day of January, 2003

**BETWEEN**

MICROMEDIA LIMITED (doing business as Micromedia ProQuest) of 20 Victoria Street, Toronto, ON Canada M5C 2N8 ("the Publisher")

and

The British Columbia Electronic Library Network of 4355 Mathissi Place, Burnaby, BC, V5G 4S8 ("the Consortium")

**WHEREAS** the Publisher holds the rights granted under this License

**AND WHEREAS** the Consortium desires to enable Members of the Consortium to use the Licensed Materials and the Publisher desires to grant to the Consortium the license to use the Licensed Materials, subject to the terms and conditions of this License.

**IT IS AGREED AS FOLLOWS:**

**1. Key Definitions**

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

**1.1 Licensed Material**

The electronic material listed in Schedule 1, or in new Schedules to this License, which may be agreed by the parties from time to time.

**1.2 Authorized Users**

Current members of the staff of Members (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently studying at the Member's institution, who are permitted to access the Secure Network from within the premises of the Library Premises and from such other places where Authorized Users work or study, including without limitation halls of residence and lodgings and homes of Authorized Users, and who have been issued by a Member with a password or other authentication.

### **1.3 Walk-in Users**

Member libraries offering service to the general public may provide access to and permit copying from the online databases listed in Schedule 1 (subject to limitations elsewhere in the agreement) by members of the public for their occasional scholarly, research, educational and personal use by means of workstations located at the Library Premises, as designated in Schedule 2. For the avoidance of doubt, the payment of a fee in order to be registered as a Walk-in User is deemed not to constitute Commercial Use.

### **1.4 Library Premises**

The physical premises of the Library or Libraries operated by the Members, as specified in Schedule 2.

### **1.5 Commercial Use**

Use for the purposes of monetary reward (whether by or for the Member or an Authorized User or Walk-in User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, neither the recovery of direct costs by the Member from Authorized Users, nor use by the Member or by an Authorized User of the Licensed Material in the course of research funded by a commercial organization, is deemed to constitute Commercial Use.

### **1.6 Secure Network**

A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorized Users and Walk-in Users approved by the Member whose identity is authenticated at the time of login and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Member.

### **1.7 Member**

An entity who has agreed to be a member of the Consortium or a party to this Agreement and who is bound by the terms of a signed and authorized legal agreement with the Consortium or Micromedia to abide by the terms of this license for their institutions/enterprises, employees, users and libraries.

## **2. Agreement**

**2.1** Micromedia has obtained the right to provide the Licensed Material from the publishers of the materials contained in the databases, and the copyright of the Publisher and its information providers is acknowledged. For further certainty, no copyright or ownership rights are transferred by this license.

**2.2** Micromedia hereby grants the Members of the Consortium a non-exclusive, non-transferable license to give Authorized and Walk-in Users access to the Licensed Material via a Secure Network for the purposes of research, teaching and private study, subject to the terms and conditions of this License.

**2.3** The Member agrees to pay the Fee, either directly to Micromedia or to the Consortium to which the Member belongs. Each Consortium will be responsible for paying collected fees to Micromedia on behalf of its Members. Libraries who are not members of a participating Consortium will be responsible for payment to Micromedia directly.

**2.4** This License shall commence at the beginning of the Subscription Period, and remain in effect until the end of the Subscription Period, when the License shall automatically terminate unless the parties have previously agreed to renew it.

**2.5** Use of the Licensed Material by Members, Authorized and Walk-in Users will be subject to the terms and conditions in Schedule 3, as amended from time to time, except where contradictory and, in that instance, the main agreement takes precedence.

### **3. Permitted Uses**

**3.1** Members of the Consortium may, subject to Clause 4 below:

- 3.1.1** Make such back-up copies of the Licensed Material as are reasonably necessary [*only applicable in the case of local mounting*].
- 3.1.2** Make such temporary local electronic copies (by means of caching or mirrored storage) of part of the Licensed Material as are necessary to ensure efficient use by Authorized and Walk-in Users, provided that such use is subject to all the terms and conditions of this Agreement and does not result in making available to Authorized and Walk-in Users of duplicate copies of the Licensed Material.
- 3.1.3** Allow Authorized and Walk-in Users to have access to the Licensed Material, from Micromedia's server or from another server designated by Micromedia via the Secure Network.
- 3.1.4** Make searches of the database.
- 3.1.5** Display, download or print the Licensed Material for the purpose of internal marketing or testing, or for training Authorized Users.

**3.2** Authorized, and Walk-in Users may, subject to Clause 3 and 4:

- 3.2.1** Search, view, retrieve, print and display the Licensed Material.
- 3.2.2** Electronically save parts of the Licensed Material for personal use.
- 3.2.3** Print off single copies or parts of the Licensed Material.
- 3.2.4** Distribute single copies of parts of the Licensed Material in print or electronic form to other Authorized Users.
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## **4. Prohibited Uses**

**4.1** Neither the Consortium nor any Member nor Authorised Users may:

- 4.1.1** Remove or alter the authors' names or the Publisher's copyright notices or other means of identification or disclaimers as they appear in the Licensed Material.
- 4.1.2** Make print or electronic copies of multiple extracts of the Licensed Material for any purpose, other than back-up copies as permitted in Clause 3.1.1.
- 4.1.3** Provide, by electronic means, to a user at another library or elsewhere, a retained electronic copy of any part of the Licensed Material.
- 4.1.4** By pass the links to the users license agreements, a sample of which is in Schedule 3.

**4.2** The Publisher's explicit written permission must be obtained in order to:

- 4.2.1** Use the whole or any part of the Licensed Material for any Commercial Use.
- 4.2.2** Distribute the whole or part of the Licensed Material to anyone other than Authorized Users.
- 4.2.3** Publish, distribute or make available the Licensed Material, works based on the Licensed Material or works, or combine it with any other material.
- 4.2.4** Alter, abridge, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this License, to Authorized and Walk-in Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

## **5. Publisher's Undertakings**

**5.1** Micromedia warrants to the Consortium that it is the owner of the copyright in the Licensed Material or that it is duly licensed to use or owns the copyright material contained in the Licensed Material and that the Licensed Material used as contemplated in this License does not infringe any copyright or other proprietary or intellectual property rights of any natural or legal person. Micromedia shall indemnify and hold the Consortium and any of its Members harmless from and against any loss, damage, cost, liability or expense (including reasonable legal and professional fees) arising out of any legal action taken against the Consortium and any of its Members claiming actual or alleged infringement of such rights provided that the Publisher is given prompt notice of the action and the opportunity to defend or settle the action at its expense and that the member co-operates in the defence of the action. This indemnity shall survive the termination of this License for any reason. This indemnity shall not apply if the Consortium or any of its Members has amended or used the Licensed Material in any way not permitted by this License.

## **5.2 Micromedia shall:**

- 5.2.1** Make the Licensed Material available to the Consortium via Canada's Information Resource Centre (CIRC) Web site from the Micromedia or other authorized server(s).
- 5.2.2** Use all reasonable endeavours to ensure that the relevant server or servers referred to in clause 5.2.1 have adequate capacity and bandwidth to support the usage of the Consortium over the term of this License.
- 5.2.3** Use all reasonable endeavours to make the Licensed Materials available to the Consortium and its Members at all times and on a twenty-four hour basis, save for routine maintenance, and to restore access to the Licensed Material as soon as possible in the event of an interruption or suspension of the service.
- 5.2.4** Notify the Consortium before downtime for service or updates; perform routine servicing of the server or database during off-peak hours.
- 5.2.5** Provide access to usage statistics for the Licensed Material.

**5.3** Micromedia reserves the right at any time to withdraw from the Licensed Material any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable. If the withdrawn material represents more than ten per cent (10%) of the product, Micromedia shall make a pro rata refund of part of the Fee, taking into account the amount of material withdrawn and the remaining unexpired portion of the Subscription Period.

## **6. Consortium's Undertakings**

### **6.1 The Consortium and each Member shall:**

- 6.1.1** Use all reasonable endeavours to ensure that all Authorized and Walk-in Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Material and to abide by the terms and conditions of the License.
- 6.1.2** Notify Micromedia immediately upon becoming aware of any material unauthorized use or other breach, and take all reasonable steps to ensure that such activity ceases and to prevent any recurrence.
- 6.1.3** Issue passwords or other access information only to Authorized Users and use all reasonable endeavours to ensure that Authorized Users do not divulge their passwords or other access information to any third party.
- 6.1.4** Allow Walk-in Users access to the Licensed Materials only from computer terminals within the Library Premises.
- 6.1.5** Nothing in this License shall make the Consortium or any of its Members liable for breach of the terms of the License by any Authorized or Walk-in User provided that the Consortium and its Members did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

- 6.1.6** The Consortium will be responsible for prompt processing payment of the Fee (and will be entitled to receive any refund of the Fee) on behalf of the Members of the Consortium.
- 6.1.7** The Consortium will be responsible for obtaining an agreement as per the Agreement Form in Schedule 1A and duly signed by an authorizing signatory of the Member and providing copies to the Publisher.

## **7. Termination**

- 7.1** In addition to the automatic termination (unless renewed) under Clause 2, this License is terminated if either party gives written notice to the other in the following circumstances:
  - 7.1.1** Either party commits a material or persistent breach of any term of this License and fails to remedy the breach within thirty days of notification in writing by the other party.
  - 7.1.2** Either party becomes insolvent or becomes subject to receivership, liquidation or similar external administration.
  - 7.1.3** On termination all rights and obligations of the parties automatically terminate.
  - 7.1.4** On termination of this License by the Consortium for cause, as specified in Clauses 7.1.1 and 7.1.2 above, Micromedia shall forthwith repay a rateable proportion of the Fee as represents the paid but unexpired part of the Subscription Period.

## **8. General**

- 8.1** This License may not be assigned by either party to any other person or organization, nor may either party sub-contract any of its obligations, without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 8.2** If rights in all or any part of the Licensed Material are assigned to another publisher, Micromedia shall use its best endeavours to ensure that the terms and conditions of this License are maintained.
- 8.3** Alterations to this License and to the Schedules to this License (which may be altered separately from the body of this License without affecting the validity of the License as a whole) are only valid if they are recorded in writing and signed by both parties.
- 8.4** Any notices to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the addressee as set out in this License or to such other address as notified by either party to the other as its address for the service of notices and all such notices shall be deemed to have been received within 7 days of posting.
- 8.5** Either party's failure to perform any term or condition of this Agreement, as a result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures or damage to or destruction of any network facilities) shall not be deemed to be, or to give rise to, a breach of this Agreement.
- 8.6** The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

**8.7** The failure of either party to require performance by the other party of any provision of this Agreement will not affect its full right to require such performance at any subsequent time; nor will the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

**8.8** This Agreement shall be governed by and construed in accordance with Canadian law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the Canadian courts.

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

**FOR MICROMEDIA:**

Name  
Title  
Date

Signature: \_\_\_\_\_

**FOR THE CONSORTIUM:**

Name Anita Cocchia  
Title Manager  
Date January 15, 2003

Signature: \_\_\_\_\_

## **SCHEDULE 3 – Canada’s Information Resource Centre Agreement**

WWW License Agreement

Canada’s Information Resource Centre

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