

The Gale Group Subscription and License Agreement

This Subscription and License Agreement (the "Agreement") is by and between The Gale Group, Inc. ("Gale"), a Delaware corporation, with its principal office at 27500 Drake Rd., Farmington Hills, MI., USA 48331-3535 and The Regents of the University of California ("Subscribing Institute") with principal offices at California Digital Library, 415 20th Street, 4th Floor, Oakland, CA 94612-2901 USA.

This Agreement provides for the use by the Subscribing Institute of the "Licensed Content" as defined below and any written materials supplied by Gale under this Agreement.

In consideration of the mutual promises hereinafter set forth, as well as other good and valuable consideration, Gale and Subscribing Institute agrees as follows:

1.0 Definitions

- A. "Licensed Content" shall mean Gale's branded collections of content, which may include third party content, as described in Addendum A.
- B. "Authorized User" of the Licensed Contents are defined as all currently enrolled full and part-time students, or remote learners registered for classes or programs with Subscribing Institute, faculty and other employees of Subscribing Institute, Subscribing Institute's classroom users, walk-in patrons of Subscribing Institute, each of whose access to the Licensed Content is authenticated by a secure server and/or system of Subscribing Institute and whose use of the Licensed Content is bound by obligation of terms of use with regard to the Licensed Content that are no less restrictive than those set forth in this Agreement with respect to Subscribing Institute, and the following other designated users, if any, including remote users who are authenticated by the University of California server(s) and/or systems, and teachers, students and staff.
- C. "Authorized Sites" shall mean the following University of California campuses: Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Barbara, Santa Cruz.

2.0 Scope Of License

- 2.1 Under the terms of this Agreement, Gale hereby grants Subscribing Institute, the non-transferable, non-exclusive right to download, display, view and print and/or make single paper or electronic copies of citations, abstracts, full text or portions thereof of excerpts of records contained in the Licensed Content for internal business purposes and for their Authorized User's educational research or personal non-commercial use only. Subscribing Institute may not use any data or documentation received from the Licensed Content except as expressly provided in this Agreement and except as permitted by U.S. Copyright Law and CONTU guidelines, which law shall govern the use of all data and documentation received from the Licensed Content. Subscribing Institute agrees not to sell, exchange, barter or transfer, rent, lease, loan, resell for profit, distribute or in any other manner commercially exploit any data or documentation received from the Licensed Content. Furthermore, Subscribing Institute will not use the Licensed Content as a component of, or a basis for, a directory, database, or other publication prepared for sale or for any other form of distribution, and will neither duplicate nor alter the product in any way. The aforesaid rights are to be exercised only at the Authorized Site or remotely by logging on to a secure network. Use of the Licensed Content will be limited to the Authorized User base of the Subscribing Institute(s) licensing the product through this Agreement as defined in Section 1.0 (B).
- 2.2 The term of this Agreement including database access will begin on the date of contract signing and remain in effect unless earlier terminated or extended as provided for herein. This Agreement will renew unless either party provides written notice within thirty (30) days before end of the then current term.
- 2.3 Subscribing Institute acknowledges that Gale and its third party data providers own all content within the Licensed Content and all portions thereof. Neither Gale nor its third party data Suppliers transfers any ownership. Subscribing Institute and its Authorized Users may not reproduce, transfer or transmit, in any form,

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or by any means, the Licensed Content or any portion thereof without the prior written consent of Gale, except as specifically authorized in this Agreement.

- 2.4 The Subscribing Institute shall use all reasonable efforts to restrict and control unauthorized access to the Licensed Content. The Subscribing Institute agrees to notify Gale if it becomes aware of any of the following: (a) any loss or theft of the Subscribing Institute's passwords(s); (b) any unauthorized use of any of the Subscribing Institute's passwords(s) of the Licensed Content; or (c) any breach by an Authorized User of the terms of this Agreement. Upon becoming aware of any breach of the terms of this Agreement by an Authorized User, the Subscribing Institute agrees to work with Gale to correct such practices.
- 2.5 Third party data suppliers may provide additional terms and conditions affecting the Subscribing Institute's use of the Licensed Content, which will be appended to this Agreement. Such terms and conditions will prevail and control use of the relevant Licensed Content over any conflicting terms contained herein. Subscribing Institute agrees that this Agreement, to the extent it pertains to the Licensed Content contained in the Product, may be enforced by the third party data supplier.
- 2.6 Gale reserves the right at any time to withdraw from the Licensed Content 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.
- 2.7 Gale agrees not to cause Authorized Users to enter into a potentially binding agreement with the publisher (e.g., a "click-through" license) independent of the institutional agreement with the Subscribing Institute as a condition use of its product.
- 2.8 Subscribing Institute and Authorized Users may access the Licensed Content over the Internet via the Subscribing Institute's Internet Protocol (IP) address(es). In addition, Subscribing Institute and Authorized Users may use the Licensed Content at Authorized Sites, provided that Subscribing Institute agrees to be bound by the terms of use contained in this Agreement. Subscribing Institute will make reasonable efforts to inform Authorized Users of the terms of use of this Agreement and to protect the licensed materials from any use that is not permitted under this Agreement. The parties shall cooperate in the implementation of additional security procedures as they are developed.
- 2.9 Subscribing Institute may not duplicate, nor shall it knowingly permit third parties to duplicate, the Licensed Content(s) in hardcopy or machine-readable form without prior written authorization from Gale, except as provided below:
- a. Redistribution and Interlibrary Loan. Subscribing Institute may reproduce limited portions of the Licensed Content(s) and redistribute the results of searches among the Authorized Users, and perform interlibrary loan of materials from the Licensed Content(s) in accordance with U.S. copyright law and the Commission on New Technical Uses (CONTU) guidelines, which shall apply to both analog and digital copying and redistribution.
 - b. Personal and classroom use: Subscribing Institute is granted permission to reproduce small, discrete portions of the Licensed Content(s) that do not contain a significant segment of the Licensed Content(s) and to redistribute free of charge or on a cost-recovery basis the results of searches for classroom and personal use by Authorized Users. Subscribing Institute may make one or more hard copies of the output of any Licensed Content(s) search; Subscribing Institute may not sell or distribute such copies to anyone other than an Authorized User. Subscribing Institute may make one or more copies of any search output on diskette or downloaded to hard disk; but Subscribing Institute may not distribute such copies to anyone who is not an Authorized User.
 - c. Electronic Links: The University of California is committed to the use of emerging OpenURL standard to allow linking to related materials in other locations. If Gale does not use the OpenURL standard, Gale staff will provide information to Subscribing Institute upon request to assist the Subscribing Institute in creating links directly from the University of California's library catalogs and licensed resources to the content at the journal issue and article levels. Subscribing Institute may incorporate parts of the Licensed Material in electronic reserves for use of Authorized Users in the course of instruction. Each such item shall carry appropriate acknowledgement of the source, listing title and author of extract, title and author of work, and publisher. The electronic copy of such items shall be deleted by the Subscribing Institute

when no longer required for such purpose.

- 2.10 Nothing in this License shall in any way exclude, modify or affect anything the Subscribing Institute or any Authorized User is allowed to do in respect of any of the Licensed Content consistent with existing "fair use" law, defined by the U.S. Copyright Code of 1976 (17 U.S.C. § 105-107).

3.0 Remote Access

Subscribing Institute acknowledges and agrees that remote access is included for all Licensed Content for the Subscribing Institute and its Authorized Users licensing product through this Agreement. The Subscribing Institute agrees to use reasonable efforts to inform its Authorized Users of the provisions listed below and to use reasonable efforts to restrict and control unauthorized access to the Licensed Content. Furthermore, the Subscribing Institute shall not be liable for the actions of individual Authorized Users who act without the knowledge and consent of the Subscribing Institute. The following terms regarding remote access shall apply:

- A. The Subscribing Institute and Authorized Sites are authorized to provide on-site, walk-in access or remote access via computer to the Licensed Content to their patrons.
- B. Authorized Users who use remote access to access such Licensed Content may do so from home or another location as long as the proper security procedures are undertaken by the Subscribing Institute that will prevent remote access by unauthorized users.

4.0 Warranties.

- 4.1 Gale warrants to the Subscribing Institute and its Authorized Users, that the Licensed Content used in accordance with this Agreement do not infringe the copyright or any other proprietary or intellectual property rights of any person.
- 4.2 Gale shall use commercially reasonable efforts to provide continuous availability of the online Licensed Content, subject to periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of data and downtime related to equipment, the failure of communications networks, or services outside of control of Gale. Gale shall use reasonable efforts to provide an average of 98% up time per month. Scheduled downtime will be performed at a time to minimize inconvenience to customers worldwide.
- 4.3 Although Gale believes the Licensed Content to be reliable, Gale does not guarantee or warrant any information or materials contained in or produced by the Licensed Content or the accuracy, completeness or reliability of the Licensed Content. Any data or information contained in or provided in connection with the Licensed Content may be incomplete or condensed. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT, GALE PROVIDES THE LICENSED CONTENT ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND AND GALE DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS OR A PARTICULAR PURPOSE. IN NO EVENT SHALL GALE BE LIABLE FOR: INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING FOR LOST PROFITS, LOST DATA, OR OTHERWISE. IN NO EVENT SHALL GALE'S LIABILITY HEREUNDER, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED THE AMOUNT OF FEES PAID HEREUNDER FOR THE LICENSE OF THE LICENSED CONTENT.
- 4.4 IN NO EVENT SHALL GALE OR ANY THIRD PARTY DATA SUPPLIER BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE LICENSED CONTENT OR FOR THE LOSS OR DAMAGE OR CORRUPTION OF DATA, LOSS OF PROGRAMS, LOSS OF BUSINESS OR GOODWILL, OR OTHER DAMAGES OR LOSSES OF ANY NATURE ARISING OUT OF THE USE, OR INABILITY TO USE THE LICENSED CONTENT, INCLUDING WITHOUT LIMITATION LOSSES ARISING FROM ANY ERRORS, OMISSIONS OR OTHER INACCURACIES IN OR CORRUPTION CAUSED WHETHER BY TRANSMISSION PROCESSING OR OTHERWISE TO THE MATERIAL PUBLISHED IN THE LICENSED CONTENT OR OTHERWISE MADE ACCESSIBLE THROUGH THE LICENSED CONTENT. IN NO EVENT SHALL GALE'S OR THIRD PARTY DATA SUPPLIER'S LIABILITY UNDER THIS

AGREEMENT EXCEED THE ANNUAL SUBSCRIPTION FEE RECEIVED BY GALE FROM SUBSCRIBING INSTITUTE.

- 4.5 Gale shall indemnify and hold Subscribing Institute and its Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by a third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Content by the Subscribing Institute or any Authorized User. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the right to defend such claims at its own expense. The other party shall provide assistance in investigating and defending such claims as the indemnifying party may reasonably request and have the right to participate in the defense at its own expense.

5.0 Termination.

- 5.1 Gale may at any time (without prejudice to its other rights or remedies) terminate this Agreement in whole or in part or suspend the provision of some or all of the Licensed Content: (i) with respect to the delivery of any part of the Licensed Content from any third party (a "Source"), upon request of such Source or immediately upon termination of Gale's agreement with such Source; (ii) upon thirty (30) days prior written notice to Subscribing Institute in the event of the breach of this Agreement by Subscribing Institute, unless Subscribing Institute cures such breach within such thirty (30) period. In the event this Agreement is terminated by Subscribing Institute due to a breach by Gale prior to the expiration of the annual term of this Agreement, Gale shall credit to Subscribing Institute all fees applicable to the unexpired term of this Agreement on a pro-rata basis.
- 5.2 Either party may terminate this Agreement by written notice stating such party's intent to terminate, in the event the other party materially breaches any provision of this Agreement in the performance of any of its obligations hereunder, and such default or breach shall have continued for thirty (30) days after such notice was given. Either party may have the right to immediate termination in the event of, but shall not be limited to, the filing by the party receiving the notice of termination of a voluntary or involuntary petition of bankruptcy, the making of such party of an assignment for the benefit of creditors, the petitioning for the appointment of a custodian, receiver or trustee for such party of all or substantially all of such party's assets, or commencing of a proceeding for dissolution or liquidation without a successor to such party's business.
- 5.3 Gale holds the right to terminate this Agreement if the Subscribing Institute willingly defaults in making payment of the Fee as specified in Section 6.1 of this Agreement and fails to remedy such default after receiving thirty (30) days of notification in writing by Gale.
- 5.4 On termination of this Agreement by the Subscribing Institute for cause, Gale shall forthwith credit the proportion of the Fee that represents the paid but unexpired part of the Subscription Period.

6.0 Payment

- 6.1 As full consideration for Gale's performance of its obligations under this Agreement, Subscribing Institute shall pay to Gale the subscription fee specified in the purchase order and any applicable sales, use, excise, or similar taxes. The fee is due within thirty (30) days after invoice date.
- 6.2 Gale reserves the right to deny Subscribing Institute further access to the Licensed Content in the event payment is not received by its due date. Accounts not paid within thirty (30) days after invoice date shall be deemed delinquent and are subject to be discontinued.

7.0 General

- 7.1 Entire Agreement. This Agreement shall constitute the entire Agreement between the Parties and supercedes all prior Agreements and understandings oral or written relating to the subject matter hereof. Alterations to this Agreement and to the Addendum to this Agreement are only valid if they are recorded in writing and signed by both parties.



- 7.2 Assignment. 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; provided however, Gale may assign to an affiliate this Agreement without consent of the Subscribing Institute. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties. Any attempted assignment in violation of this section is null and void.
- 7.3 Force Majeure Neither party's delay or failure to perform any provision of this Agreement, as result of circumstances beyond its control (including, without limitation, war, strikes, flood, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Agreement.
- 7.4 Notice. Any notice or other communication required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given on the day of service if served personally or three (3) days after mailing if mailed by First Class mail, registered or certified, postage prepaid, or two days after mailing if mailed by commercial overnight courier to such individual and address as may be specified in a written notice by either party to the other.
- 7.5 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable under any applicable statute or rule of law, the provision shall be deemed omitted to the extent that it is invalid, illegal, or unenforceable. In such a case, the remainder of the Agreement shall be construed in a manner as to give greatest effect to the original intention of the parties hereto.
- 7.6 Waiver. The waiver of any right or failure of either party to exercise in any respect any right provided in this Agreement in any instance shall not be deemed to be a waiver of such right in the future or a waiver of any other right under this Agreement.
- 7.7 Headings. The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.
- 7.8 Relationship of the Parties. The relationship of the parties hereto shall be that of independent contractors. Nothing herein shall be construed to create any partnership, joint venture, or similar relationship or to subject the parties to any implied duties or obligations respecting the conduct of their affairs, which are not expressly stated herein. Neither party shall have any right or authority to assume or create any obligation or responsibility, either express or implied, on behalf of or in the name of the other party, or to bind the other party in any matter or thing whatsoever.
- 7.9 Usage Data. Gale agrees to provide composite usage data for the consortium and itemized data for individual libraries, on a monthly basis. Gale agrees to cooperate with the Subscribing Institute to provide usage data that be provided at the level of detail required for objective evaluation of both product performance and satisfaction of user needs. Gale agrees that usage data will be posted on the Subscribing Institute's internal web site for the use of collection development personnel.
- 7.10 Counterparts. The execution of counterparts of this Agreement by the parties shall constitute a binding execution of this Agreement.
- 7.11 Compliance with Americans with Disabilities Act. Gale shall make reasonable efforts to comply with the Americans with Disabilities Act (ADA).
- 7.12 Notice of the Use of Digital Rights Management Technology. In the event that Gale utilizes any type of digital rights management technology to control the access of the usage of the Licensed Database, Gale agrees to notify Subscribing Institute of the name, contact information and any technical specifications for the digital rights management technology utilized.

This document must be signed and returned to Gale. I understand that by signing this I am bound by the terms and conditions herein.

ACCEPTED:

The Gale Group

**The Regents of the University of
California** 

Date

Date

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ADDENDUM A
LICENSED CONTENT, SUBSCRIPTION PERIOD, ACCESS METHOD, FEE SCHEDULE

Annual subscription fee for the Subscribing Institute (as designated in Addendum B) for the following Licensed Content for the 12-month subscription period as noted below:

Licensed Material: Eighteenth Century Collections Online, Modules 1 - 7

Subscription Period: August 29, 2005 – August 28, 2006

Format: Online

Access: InfoTrac Web
GaleNet
Z39.50

Access Method: User ID/Password
HTTP refer
Domain name/IP address

Hosting Fees:

Assuming continuation of this Agreement beyond year 1, Gale reserves the right to review pricing on an annual basis with increases not to exceed five percent (5%) annually.



ADDENDUM B

AUTHORIZED LIST OF PARTICIPATING MEMBER LIBRARIES, WITH STREET ADDRESS AND IP ADDRESS

Bill to Contact: Terry Vrable, CDL Acquisitions

Bill to Address: Geisel Library
University of California
9500 Gilman Drive 0175A
La Jolla, CA 92093-0175

Campuses of the University of California

1. University of California, Berkeley
2. University of California, Davis
3. University of California, Irvine
4. University of California, Los Angeles
5. University of California, Merced
6. University of California, Riverside
7. University of California, San Diego
8. University of California, San Francisco
9. University of California, Santa Barbara
10. University of California, Santa Cruz
11. University of California Office of the President

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