

The Gale Group Subscription and License Agreement

The parties to 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 Tallahassee Community College on behalf of the College Center For Library Automation and the Authorized Sites identified in Addendum B, ("Subscribing Institute") with principal offices at 444 Appleyard Drive, Tallahassee, FL 32304.

This agreement provides for the use by the Subscribing Institute of the product as defined below, and any and all enhancements, modifications or alterations made thereto by Gale, and any written materials supplied by Gale under this agreement ("Agreement").

In consideration of the mutual premises 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 products are defined as:
 - All currently enrolled full or part-time students in any public or private K-12 school, college or university of Subscribing Institute; currently employed faculty (whether on a permanent, temporary, contract or visiting basis), teaching staff, administrators and staff in any public or private school, college or university of the Subscribing Institute and its Authorized Sites.
 - All persons holding a valid library card from Subscribing Institute.
 - Onsite users permitted by the Subscribing Institute to access the Licensed Content from designated terminals. Onsite users within the public and private schools, colleges and universities of the Subscriber (walk in users).
 - Subscribing Institute agrees that Subcontractors, Affiliates and other third party contacts of the Subscribing Institute are not defined as Authorized Users under this license and as such are not granted access rights without the prior written consent of Gale, except as specifically authorized in this Agreement.
- C. "Authorized Sites" shall mean any public library, public and private school, academic institution (defined in **Addendum B**) that at any time during the term of this Agreement is authorized to access the Licensed Content.
- D. "Access Date" shall mean the date upon which Gale provides access to the Licensed Content for the Subscribing Institute and Authorized Sites.

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 use the Product according to the terms of this Agreement. Authorized uses include the right to download, display, view and print off single copies of excerpts of records contained in the Licensed Content for internal business purposes and for their Authorized User's personal non-commercial or non-profit educational use. The aforesaid rights are to be exercised only at the Authorized Site or remotely by logging on via a secure authentication mechanism such as outlined

herein. Subscribing Institute will not use the Product 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. Use of the Product will be limited to the Authorized User base of the Subscribing Institute and Authorized Sites licensing the Product through this Agreement as defined in Section 1.0 (B).

- 2.2 The term of this Agreement is defined in Addendum A and will 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 Subscriber 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, 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 and its Authorized Users are authorized to display, download, print and/or make paper or electronic copies of citations, abstracts, full text or portions thereof provided the information is used solely for personal, non-commercial or non-profit educational use.
- 2.5 The Subscribing Institute shall use 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.
- 2.6 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.
- 2.7 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 for profit or in any other manner commercially exploit any data or documentation received from the Licensed Content.
- 2.8 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, or unlawful.

- 2.9 Staff at Authorized Sites may use the Product to fulfill occasional requests from other institutions (a practice commonly called Interlibrary Loan) or from non-affiliated patrons asking reference questions. Staff at non-affiliated libraries who are participating in collaborative digital reference services may access the Product in order to assist Authorized Users affiliated with the Authorized Sites and who are legitimately allowed access to the Product.

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 subject to the conditions as listed below. Pursuant to section 2.5, the Subscribing Institute agrees to make reasonable efforts to prevent any breach by its Authorized Users for this provision:

- 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 may remotely access the Licensed Content, provided that such access is accomplished through a secure method such as Referring URL, scripted username and password, or IP Address. Remote access to the Product from non-subscribing institutions is not allowed if the purpose of the use is for commercial gain through cost reduction or avoidance for a non-subscribing institution.
- C. Remote access is included for all Licensed Content for the Subscribing Institute and its Authorized Users licensing product through this Agreement, except for the AncestryPlus Database. Access must be in library for this single database.

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.

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) day 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 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 Addendum A 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 electronically repossess the Licensed Content and 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.
- 6.3 Gale shall make every effort to keep renewal pricing increases to reasonable levels. Renewal pricing for comparable content should not significantly increase over previous years' pricing, adjusting for inflation where necessary. When renewal-pricing increases of more than 3% (three percent) are anticipated, Gale shall provide notices of increases to Subscribing Institute no later than 60 (sixty) days prior to the renewal date.

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 Addenda 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 upon notice to 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 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.
- 7.3 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 five (5) 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.
- 7.4 Notices shall be addressed to the party to be so notified as follows:

If to Gale:

Michael Dalida
The Gale Group
27500 Drake Road
Farmington Hills, MI 48331-3535

If to Subscriber:

Jerry Schilling
Assistant Vice President, Administrative Services
Tallahassee Community College
444 Appleyard Drive, Tallahassee, FL 32304
(850) 201-8590

With cc to:

College Center for Library Automation
Attention: Executive Director of CCLA
1753 W. Paul Dirac Drive
Tallahassee, FL 32301
Phone: (850) 922-6044 Fax: (850) 922-4869

- 7.5 Statistics. Gale confirms that usage statistics covering the online usage of the journals and databases included in this Agreement will be provided. Gale further confirms that such usage statistics will adhere to the specifications of the COUNTER Code of Practice, including data elements collected and their definitions; data processing guidelines; usage report content, format, frequency and delivery method. Gale will be level 1 compliant as of January 2004.
- 7.6 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 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.

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:

Tallahassee Community College

Gerald Schilling
Authorized Signature for Institute
Gerald Schilling
Name (print or type)
Assist. VP of Admin. Services
Title
12/12/03
Date

The Gale Group

George E. McBride
Authorized Signature for Gale
George E. McBride
Name (print or type)
Vice-President, Sales
Title
12/2/03
Date