

CENGAGE LEARNING, INC.
GALE PRODUCT AND SERVICES LICENSE AGREEMENT
TERMS & CONDITIONS

License Grant. Cengage Learning, Inc. (CL collectively with its affiliates, subsidiaries, assigns, partners and designees, “CL”) hereby grants a non-exclusive, non-transferable license (the “License”) for Customer, defined as any Washington library participating in the Office of the Secretary of State (OSOS) Statewide Database Licensing Project via a signed “Intent to Participate” form (“Customer”), and its Authorized Users to access and use the products and services as listed and described in the Statement of Work section of the contract between OSOS and CL.

1. Product and Services. Subject to the timely receipt of payment and conformance to the T&Cs herein and the Gale Terms of Use, CL shall deliver the Product and Services, as detailed above. CL shall make the Product and Services available for use by Customers’ Authorized Users. An “Authorized User” means only any resident of the state of Customer who is a registered library patron of a Customer library, i.e., any public libraries, any academic institutions (public and private higher education institutions), any Educational Service Districts, any K-12 schools (public, private), any State accredited schools in the State of Customer, and any eligible special libraries, including: all then currently enrolled students, faculty, staff, registered patrons, Walk-ins, and remote users whose access to the Gale Product and Services is authenticated by a secure server or other system. The Gale Products and Services is not for use by For-Profit Libraries, or Corporations in the state of Customer or elsewhere.

2. Terms of Service.

- a. Subject to the payment of the Fees in the Invoice, Customer may authorize its Authorized Users to access and use the applicable Product as is consistent with the Fair Use Provisions of United States and international copyright laws for their individual, personal, non-commercial, educational, academic, and instructional use, only. Authorized Users include identified individuals authorized to use the Product. Specifically:
 - i. Customer and Authorized Users may electronically display, download, digitally copy, and print a reasonable portion of the Gale Products and Services.
 - ii. Authorized Users may provide, by paper or electronic means, a single copy of an individual document that is part of the Gale Products and Services to a colleague who is not an Authorized User for personal, scholarly, educational, scientific, or professional use, but in no case for Commercial Use.
 - iii. Customer and Authorized Users may extract and use, with appropriate attribution, excerpts from the Gale Products and Services for academic research, scholarship, and other educational purposes, including extraction and manipulation for the purpose of illustration, explanation, example, comment, criticism, teaching, research, and analysis.
 - iv. Customer(s) may create persistent links to Gale Products and Services for access by Authorized Users from within Secure Networks.
 - v. Customer(s) and Authorized Users may incorporate reasonable portions of the Gale Products and Services in Electronic Reserve collections, course management systems, and printed and electronic coursepacks or other educational materials for Authorized Users in the course of instruction at a member institution, and/or in electronic learning environments hosted on a secure network, but not for commercial use. Each such item shall carry appropriate acknowledgement of the source. Coursepacks in alternate formats may also be offered to Authorized Users that require accessible formats.

Exhibit B

- vi. The Customer may use the products and services for supplying interlibrary loan requests without the prior written consent of CL and (if applicable) its third party licensor(s). Using electronic, paper, or intermediated means, Customer at its discretion may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Customer agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works..
- b. Customer is not liable for unauthorized use of the product as long as reasonable efforts have been made to authenticate users, and to inform them of the terms of use.
- c. Customer shall take all reasonable precautions necessary to safeguard against unauthorized access and use of the Product. Individual Authorized User utilization of the Product shall be subject to Gale's Terms of Use and Privacy Policy then in effect. In the event of conflict between Gale's Terms of Use and this Agreement, the terms of this Agreement shall prevail.
- d. If either party is aware of any unauthorized use, both parties will cooperate to address unauthorized use and/or access.
- e. For the avoidance of doubt, Authorized Users are not a party to this Agreement.
- f. CL may with, or without notice, add features to the Product, or change or remove features of the Product, at any time. CL is permitted to withdraw from the Gale Products and Services 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. CL shall give written notice to Customer of such withdrawal within thirty (30) days of such withdrawal. If the material withdrawn represents more than ten per cent (10%) of the database or if the material withdrawn represents a removal of titles the Customer considers critical, CL shall credit to Customer that part of the fee that is in proportion to the amount of material withdrawn and the remaining un-expired portion of the subscription period.
- g. CL will use reasonable commercial efforts to ensure that the Product is available on a monthly basis not less than 98.0% of the time, exclusive of scheduled outages, maintenance, and downtime that is outside of CL's reasonable control. As Customer's sole remedy for CL's failure to meet the monthly uptime requirement, at Customer's request, CL may provide a refund of the Fee pro-rated for the month where service was interrupted, in CL's sole discretion.
- h. CL may suspend Customer's and/or any Authorized User's access to the Product without liability if: (i) CL reasonably believes that the Product is being used in violation of this Agreement; (ii) Customer fails to cooperate with CL's reasonable investigation of a suspected violation of this Agreement; (iii) there is an attack on the Product or it is accessed or manipulated by a third party in violation of this Agreement; (iv) CL is required by law, or a regulatory or government body to suspend access to the Product; or (v) there is another event for which CL reasonably believes that the suspension of access to the Product is necessary to protect the Product or CL's other customers from imminent and significant operational, legal, or security risk. CL will give Customer advance notice of a suspension under this Section of at least thirty-six (36) hours unless CL determines in its reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect the Product or CL's other customers from imminent and significant operational, legal, or security risk. CL will not suspend access to the Product if the grounds on which the suspension are based are cured during the forgoing notice period. Such suspensions will be of the shortest duration sufficient to terminate and block unauthorized activity.

3. Intellectual Property. CL has the proprietary rights in and to the Product and Services and CL owns all, right, title, and interest thereto, including all intellectual property rights associated therewith, throughout the world. Customer shall not, by virtue of this Agreement or by virtue of its access to the Product obtain any proprietary rights in or to the Product or Services. Customer shall not use or transmit the Product or Services in any manner except as specifically authorized herein.

4. Warranties & Indemnities. Customer represents and warrants that: (i) Customer has full power and authority to enter into this Agreement and to grant the rights granted hereunder; and (ii) Customer shall not use the Product or Services in any manner except as expressly authorized in this Agreement. CL warrants that the use of the Gale Products and Services as permitted by this Agreement does not infringe upon the intellectual property rights of any person or organization. Each party to this agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No party to this agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this agreement.

5. Term and Termination. This Agreement shall commence as of the date specified in the Agreement and shall continue in full force and effect for the duration of the Term and may be renewed according to the terms specified in the Contract. Customer may terminate this Agreement and notify CL of non-renewal with at least 90 days' written notice prior to the expiration of the then current Term or Renewal Term.

6. Payments and Fees. In consideration of the Product and Services provided by CL to Customer, Customer agrees to pay the Fee provided on the Invoice, plus any applicable shipping and handling fees, service fees, and applicable taxes. Customer shall remit payment within thirty (30) days of receipt of the Invoice. Purchases are nonrefundable and cannot be exchanged. If Customer fails to make payment, CL may, without prejudice to its other rights and remedies (1) charge interest on any unpaid amounts on a daily basis from the original due date at the rate of the lesser of 1.5% per month or the maximum amount permissible by law (2) suspend or terminate Customer's (and Customer's Authorized Users') use and/or access to the Product or both (1) and (2). Customer shall reimburse CL for all reasonable expenses CL incurs in collecting past due amounts, including wire transfer fees, collection agency fees, reasonable attorneys' fees, and court costs. CL may charge a fee for reinstatement of suspended or terminated service.

7. Limited Liability. Neither CL nor its suppliers, nor their respective directors, employees, officers, or representatives will be liable for any damages of any kind arising from the use of or inability to use the Product and Services, including but not limited to, any direct, indirect, incidental, special, consequential, exemplary, or punitive damages, or any lost profits, lost data, or loss of revenue. Without limiting the foregoing, CL's total liability will at all times be limited to the Fees paid by Customer for use of the Product and Services at issue during the immediately preceding twelve (12) month period.

8. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, and legal representatives and permitted successors and assigns, provided that the Customer may not assign this Agreement.

9. Confidentiality. The Customer shall not reveal to any person or business, confidential or proprietary information or material gained as a result of performing its obligations herein, except as may be required by any court of competent jurisdiction, governmental agency, law or regulation (in such event, the Customer shall notify CL before disclosing this Agreement). Notwithstanding the foregoing, the terms and conditions of this Agreement may be revealed by Customer as part of the normal reporting or review procedure to the Customer's accountants, auditors and legal counsel, provided such accountants, auditors, and legal counsel agree to keep such information confidential. Notwithstanding the foregoing, Customer and participating libraries cannot be required to agree to non-disclosure of licensing terms or prices.

10. Scope of Agreement. This Agreement is between individual participating libraries and CL, and is a sub-part of the larger contract between OSOS and CL, and consists of these Terms and Conditions, and as such, is subject to the “Order of Precedence” outlined there. In the event of any discrepancy or divergence between this agreement and the aforesaid Contract, the terms of the Contract shall prevail. The terms of individual participating library purchase orders, if any, are for the convenience of those libraries and do not supersede any term or condition of this Agreement. For avoidance of doubt, OSOS is not a direct party to this Agreement, and does not accept responsibility for compliance by participating libraries. However, participating libraries are required to sign an “Intent to Participate” document which includes a provision in which each library agrees to abide by the terms and conditions of this Agreement.

11. Miscellaneous: No alterations to this Agreement terms or amendment of this Agreement will be effective unless in writing and signed by both parties. No waiver of satisfaction of a condition or noncompliance with an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or noncompliance with any other obligation. Any terms of this Agreement that contemplate compliance or otherwise by their nature should extend after the termination of this Agreement will remain in effect until fulfilled. Except for Customer’s payment obligations, neither party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party, including but not limited to, acts of God, acts of terrorism, strikes, walkouts, riots, acts of war, epidemics, failure of suppliers to perform, governmental regulations, power failure(s), earthquakes and other natural disasters.