

British Columbia Electronic Library Network
Electronic Products License Agreement

THIS AGREEMENT is made 4th day of December 2008

BETWEEN: The Gale Group, Inc. of 27500 Drake Road, Farmington Hills MI 48331-3535
(herein referred to as "the Licensor")

AND: BRITISH COLUMBIA ELECTRONIC LIBRARY NETWORK (BC ELN), 8888
University Drive, British Columbia, V5A 1S6 (herein referred to as 'the Consortium')

WHEREAS the Licensor holds or administers the rights granted under this Agreement; and

WHEREAS the Licensor desires to grant to Members of the Consortium the License to use such rights for the Fee, as detailed in the attached Schedule(s), subject to the terms and conditions of this Agreement,

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

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

Member	BC ELN partner or member library participating in a license, as detailed in the attached Schedule(s).
Authorized Users	All current students, staff, and faculty of the Member, whether part-time, full-time, permanent, contract, adjunct, or Visiting; and retired faculty and staff with Emeritus, or equivalent status. Additional groups of Authorized Users (e.g. alumni) may be included, with the agreement of both Licensor and Consortium. Details about any additional groups of Authorized Users and applicable fee(s), if any, will be included in the attached Schedule(s).
Walk-In Users	Individual members of the public are considered Walk-In Users, with rights to Access and Use the Licensed Materials under the Fair Dealing provisions of the Canadian Copyright Act, while they are physically on the premises of a Member. For the avoidance of doubt, Walk-In Use is intended for individual users, not as a substitution for a license by another institution.
Licensed Materials	The electronic materials as detailed in the attached Schedule(s).

2. LICENSE GRANT

- 2.1 The Licensor hereby grants to the Members of the Consortium, subject to and in accordance with the terms of this License, a non-exclusive license to access and use the Licensed Material at the sites of Members or remotely, through secure authentication.
- 2.2 In consideration for the Licensor's licensing of the Products and/or Services listed in the Addenda, the Consortium undertakes to pay to the Licensor the Fee in accordance with the provisions of the attached Schedule(s).

3. PERMITTED USES

- 3.1 Members may allow Authorized Users to:
 - 3.1.1 ACCESS and USE the Licensed Materials from the premises of the Participating Member, or remotely via secure authentication, in order to search, retrieve, display and view the Licensed Material.
 - 3.1.2 CREATE PERSISTENT LINKS to individual articles for access by Authorized Users for Permitted Uses under this Agreement, from within secure authentication environments.
 - 3.1.3 INTERLIBRARY LOAN by paper or electronic means, a single copy of an individual document within the guidelines of traditional interlibrary loan practices and applicable copyright laws. When Licensed Materials in a particular product is not available for Interlibrary Loan by the Licensee, such Licensed Materials will be identified in the Schedule for this product.
 - 3.1.4 SCHOLARLY SHARING. Authorized Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal use or scholarly, educational, or scientific research or professional use.
 - 3.1.5 FAIR DEALING / CREATIVE COMMONS . Nothing in this agreement restricts the rights of Authorized Users under the doctrine of "fair dealing" as defined under the laws of Canada, or as permitted under Creative Commons licensing.
 - 3.1.6 ALTER or MODIFY the Licensed Materials as necessary to provide an equivalent level of service to Authorized Users with appropriately documented print or other disabilities.
 - 3.1.7 PERPETUALLY ACCESS. In the case of Licensed Materials for which a fee is paid for continual or perpetual access to the materials, on termination of this Agreement, (otherwise than as a result of notice being given by Licensor for breach of contract) Licensor shall provide reasonable assistance to BC ELN as needed to enable BC ELN and any third part vendor engaged by BC ELN to host, and provide to BC ELN and its Authorized Users uninterrupted on-line Internet web-based access to the Licensed Materials.

The Consortium or Member may participate in networks with other Libraries or Consortia for the purposes of ensuring preservation (e.g., LOCKSS networks), but

not for providing access to other members of such networks not included in this Agreement.

3.1.8 COURSEPACKS / ELECTRONIC RESERVES / VIRTUAL LEARNING.

Members and Authorized Users may incorporate parts of the Licensed Material in course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network (only accessible to Authorized Users by Secure Authentication). Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorized Users.

If the Licensor does not have the right to grant all rights under 3.1.8, these rights will apply exclusively to the content for which the Licensor does have such rights, as specified in the attached Schedule(s).

3.1.9 FEDERATED SEARCH. Members and Authorized Users may include the Licensed Material in federated or metasearch services.

3.1.10 DATA and TEXT MINING. Members and Authorized Users may conduct research employing data or text mining of the Licensed Materials in so far as the data or text mining does not overload or put an undo strain on our Gale systems.

4. PROHIBITED USES

4.1 COMMERCIAL USE. Use of the Licensed Materials for the purposes of monetary reward (whether by the Consortium, Authorized Users or Walk-in Users) by means of sale, resale, loan, transfer, hire or other form of exploitation. For the avoidance of doubt, recovery of direct costs incurred by the Member in the course of providing access to Authorized Users or Walk-in Users (e.g. printing, photocopying, or administration fee), is not deemed to be Commercial Use.

4.2 SUBSTITUTION FOR LICENSE. No provision of this Agreement is intended to provide such substantial use as to constitute a substitution for an institutional license by a third party institution. For example, Walk-In User rights are designed for the provision of services to individuals, not blanket rights for all of the users of another institution.

5. THE LICENSOR'S UNDERTAKINGS

The Licensor shall:

5.1 Warrant to the Consortium that Licensor shall use commercially reasonable efforts to provide continuous availability of the online Licensed Materials, 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 Licensor. Licensor shall notify the

Consortium in a timely manner of all instances of system unavailability that occur outside Licensor's normal maintenance window and use reasonable effort to provide advance notice of hardware or software changes that may affect system performance. Scheduled downtime will be performed at a time to minimize inconvenience to the Consortium. If the Licensed Materials fails to operate in conformance with the terms of this Agreement, the Consortium shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible.

- 5.2 Give prompt notice to the Consortium of any additions, modifications to, or deletions of the Licensed Material. Failure by the Licensor to provide such reasonable notice shall be grounds for immediate termination of the Agreement by the Consortium. If any modifications render the Licensed Materials less useful to the Consortium or its Members, the Consortium may treat such modifications as a material breach under sections 7.2 and 7.3 of this Agreement.
- 5.3 Give prompt notice to the Consortium of any significant change in business model with implications for the costs of the Members and revenue for the Licensor.
- 5.4 **Notice of the Use of Digital Rights Management Technology**
In the event that Licensor utilizes any type of digital rights management technology to control the access to usage of Licensed Materials, Licensor agrees to notify Licensee of the name, contact information and any technical specifications for the digital rights management technology utilized. In no event may such Digital Rights Management Technology be used in such a way as to limit the usage rights of a Licensee or any authorized user as specified in this agreement or under applicable law.
- 5.5 **Notice of the Use of Digital Watermarking Technology**
If Licensor utilizes any type of digital watermarking technology for any element of the Licensed Materials, Licensor agrees that watermarks will not be visible to the human eye and will not degrade image quality. These watermarks shall not contain information pertaining to Authorized Users such as account numbers or IP addresses. If digital watermarking technology is used, Licensor agrees to notify the Licensee, in advance, of the name, contact information, and any technical specifications for the technology used.

6. THE CONSORTIUM'S UNDERTAKINGS

The Consortium and each Member shall:

- 6.1 Use reasonable efforts to ensure that access is restricted to Authorized Users, and that Authorized Users are made aware of, and comply with, the terms and conditions of this Agreement.

7. TERM AND TERMINATION

- 7.1 This Agreement shall commence on the date indicated on the first page of this Agreement, and shall apply to all Licensed Materials for the time period(s) as indicated on the attached Schedule(s). Subscriptions as indicated on the attached Schedule(s) will

automatically terminate at the end of the subscription period unless both parties have previously agreed to renew the subscription.

- 7.2 In the event that either party believes that the other materially has breached any obligations under this Agreement, such party shall notify the breaching party in writing. The breaching party shall have 30 days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the 30-day time period, the non-breaching party shall have the right to terminate the Agreement without further notice.
- 7.3 In the event of early termination permitted by this Agreement, the Consortium shall be entitled to a credit of any fees or pro-rata portion thereof paid by the Consortium for any remaining period of the Agreement from the date of termination. This paragraph is invalid if the Consortium commits a willful, material and consistent breach of the terms of this Agreement, and fails to remedy the breach within thirty (30) days of notification by the Licensor.
- 7.4 The Licensor hereby grants to the Consortium and its Members a nonexclusive, royalty-free, perpetual license to use all material added to the Licensed Materials for which a fee has been paid for continually or perpetual use, to which the Consortium subscribed during the term of this Agreement. Usage of materials acquired in this fashion shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement.
- 7.5 **Funding Contingency**
If public funding of the Consortium or funding of the Consortium by the Members is materially reduced and the Consortium thereby becomes unable to pay future amounts payable pursuant to this Agreement, the Consortium may give the Licensor written notice of termination and this Agreement shall terminate effective 30 days after the giving of such notice if the Consortium has failed to pay the Fee for the calendar year in which such notice was given, or if the Consortium has paid the Fee for the calendar year in which such notice was given, January 1 of the following year.

8. GENERAL

- 8.1 **Warranty and Indemnification.** The Licensor warrants that it holds the rights granted under this Agreement, and indemnifies and holds the Consortium harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the Consortium or any of its Members claiming actual or alleged infringement of such rights.
- 8.1 This Agreement and attached Schedule(s) signed by Licensor and Consortium shall comprise the complete terms and conditions of use. If there is a "click-through" agreement for users, this Agreement shall override the "click-through" agreement.
- 8.2 Alterations to this Agreement and to the Schedules to this Agreement are only valid if they are recorded in writing and signed by both parties.

- 8.3 Assignment. This Agreement may not be assigned by either party to any other person or organization without the prior written consent of the other party, nor may either party sub-contract any of its obligations, except as provided in this Agreement in respect of the management and operation of the Server and the Licensor's Representative, without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- 8.4 Notice. Any notices to be served on either of the parties or on a Member by the other shall be sent by registered mail, courier or facsimile to the address of the other as its address for service of notices. Any such notice sent by registered mail shall be deemed to have been given 14 days after the date of posting the mail. Any such notice sent by courier or by facsimile shall be deemed to have been given on the date of receipt of the courier or facsimile.
- 8.5 Force Majeure. Neither party's nor a Member's delay or failure to perform any provision of this Agreement, as a result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, "denial of service" or similar attacks, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Agreement.
- 8.6 Waiver. Failure to enforce any provision of this Agreement shall not be construed to be a waiver of such provision.
- 8.7 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.
- 8.7 If the parties disagree over an interpretation of this Agreement or whether a party or a Member is in breach of any part of this Agreement, the parties and any such Member shall in good faith enter into negotiations to resolve the disagreement and discuss the feasibility of resolving the disagreement by mediation or other means short of litigation. The parties shall cooperate in good faith in pursuing mediation or other such means.
- 8.8 This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia, and the laws of Canada applicable therein, including the BC Freedom of Information and Protection of Privacy Act, 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 courts of British Columbia and Canada.