

CENGAGE GALE PRODUCT AND SERVICES AGREEMENT

Name and Address of Licensee:

Davidson County Public Library System
Attn: Sheila Killebrew
612 S Main St.
Lexington, NC., 27292

SUBSCRIPTION/HOSTING PERIOD: 1/30/21 – 1/29/22

In consideration of the Fees payable below, and subject to and in accordance with the attached Terms and Conditions, for the duration of the Term, CL shall provide the Gale Products and Services described in this Agreement to Customer:

Billing Cycle: Customer shall remit payment within thirty (30) days of receipt of CL’s invoice.

Digital Collection:	PRICE
Gale LegalForms	\$3,184.32
Legal Forms - NC	\$0.00
Chiltonlibrary.com	\$3,567.21

TOTAL: \$6751.53

All payments shall be made in United States’ Dollars.

This Agreement and the attached Terms and Conditions (“T&C’s”) (collectively referred to as the “Agreement”) is made on the date of signature below, and is by and between Cengage Learning, Inc. (CL collectively with its affiliates, subsidiaries, assigns, partners and designees, “CL”) and Customer. Customer acknowledges and agrees that Authorized Users must accept (or Customer must accept on behalf of the Authorized User) the Gale Terms of Use found (<https://www.cengage.com/legal/terms-gale>) (“Terms of Use”) prior to gaining access to the Products and Services.

CUSTOMER	CENGAGE LEARNING, INC.
<p>Signature: _____ Date: _____</p>	<p>Signature: _____ Date: _____</p>

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

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 in the Agreement Invoice (which shall be attached hereto and incorporated herein by reference). CL shall make the Product and Services available for use by Customers' Authorized Users. An "Authorized User" means only (i) for public libraries: library staff, individual residents of the library's reasonably defined geographic service area, and walk-in patrons accessing the Services on site; (ii) for schools and academic institutions: currently enrolled students, faculty, staff, and visiting scholars, as well as walk-in patrons accessing the Services on site; (iii) for other types of organizations and subscribers: employees, and independent contractors, in the capacity of their employment or engagement with the organization. Authorized Users excludes corporate affiliates of the subscriber institution, academic bookstores, and alumni unless those users are expressly included in the Invoice.

2. Terms of Service. Subject to the payment of the Fees in the Invoice, Customer may authorize its Authorized Users to access and use the applicable Product for their individual, personal, non-commercial, educational, academic, and instructional use, only. Authorized Users includes identified individuals authorized to use the Product. Customer shall ensure that the Authorized Users and any other person that uses the Product through the use of Customer's access to the Product shall comply with the Terms of Use. 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 CL's Gale Terms of Use and Privacy Policy then in effect. For Customers with intended users under the age of eighteen (18), Customer shall be responsible for securing acceptance to the Terms of Use by a parent or guardian. CL may with, or without notice, add features to the Product, or change or remove features of the Product, at any time. 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. 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.

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. To the extent allowable by law, Customer shall defend, indemnify, and hold CL and its distributors and service providers, and their respective officers, directors, employees and agents harmless against all claims, demands, suits, losses, costs, damages, and expenses (including attorneys' fees and costs) that CL may sustain or incur by reason of any breach or alleged breach of the aforesaid warranties of Customer or any of Customer's other obligations under 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 shall automatically renew for additional Renewal Terms upon issuance of an invoice by CL. 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 limited 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 use itself or reveal to any person or business, confidential or proprietary information or material gained as a result of performing its obligations herein, including without limitation, the terms and conditions of this Agreement, 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.

10. Miscellaneous. This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement, and supersedes all other oral or written proposals, negotiations and other communications relating thereto. In the event of a conflict between the Agreement and any Invoice, the T&Cs, or other attachment hereto, the terms and conditions of the Agreement shall prevail. No amendment of this Agreement will be effective unless it is 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. The parties may sign this Agreement in several counterparts, each of which will be deemed an original but all of which together will constitute one instrument. This Agreement will be considered signed when the signature of a party is delivered by scanned image (e.g. as a "portable document format" or "PDF" file) as an attachment to electronic mail (email), and any such scanned signature is to be treated in all respects as having the same effect as an original signature, except that either party may require the exchange of original signatures.