GALE GROUP

DATA LICENSE AGREEMENT FOR ONLINE INFORMATION SERVICES

THIS DATA LICENSE AGREEMENT (the "Agreement") is made this 15th day of June, 2000, by and between Primary Source Microfilm, "Licensor," an imprint of Gale Group, Inc., a Delaware corporation with offices at: 12 Lunar Drive, Woodbridge, CT 06525, and The Regents of the University of California, "Licensee," with offices at the following address: California Digital Library, 300 Lakeside Dr., 6th Floor, Oakland, CA 94612-3550.

IN CONSIDERATION OF the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and Licensee agree as follows:

1. Definitions.

a. **"Authorized site"** means all University of California campuses, including Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Barbara, Santa Cruz and the Office of the President, plus the following other designated locations, if any:

The seventy-seven (77) University of California partner schools listed in Appendix B.

i. At such time as the University of California wishes, in Phase II of the California Digital Library's outreach efforts, to extend access to the Licensed Databases beyond the seventy-seven (77) partner schools listed in Appendix B, Licensee will inform Licensor of such and negotiate new business terms for such access.

b. **"Authorized user"** means all currently enrolled full and part-time students, distance or remote learners registered for classes or programs with License, faculty and other employees of Licensee, Licensee's classroom users, walk-in patrons of Licensee, third-party License contractors, each of whose access to the Licensed Database is authenticated by a secure server and or system of Licensee and whose use of the Licensed Database and bound by obligation of terms of use with regard to the Licensed Database(s) that are no less restrictive than those set forth in this Agreement with respect to Licensee, and the following other designated users, if any:

Remote users who are authenticated by the University of California server(s) and/or systems, and teachers, students and staff at the seventy-seven (77) University of California partner schools listed in Appendix B.

c. **"Licensed Database"** means the Licensor's online information service known as:

Declassified Documents Reference System Online: Digital Archive Option.

2. License.

a. Licensor hereby grants to Licensee the non-exclusive, non-transferable right to use the Licensed Database(s) in accordance with the terms and conditions of this Agreement, and specifically the next following paragraph. Licensor represents and warrants that it has the right to grant this license and that use of the Licensed Database(s) in accordance with the terms of this Agreement will not infringe the intellectual property or other rights of any third party. The copyright and other proprietary rights in the database remain the sole and exclusive property of the Licensor or third-party owner, as appropriate. Licensor hereby retains all rights not specifically granted to Licensee herein. There are no implied licenses to any of the Licensed Database, or to any other Licensor software, proprietary right, documentation, record or product (or to any part, portion or aspect thereof). Licensee shall not be considered to be an "owner of a copy" and shall not have Rights granted under 17 USC Sec. 117 to make adaptations of the Licensed Database, except as may be granted by the License.

Licensor 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 Licensee as a condition use of its product.

b. Licensee and Authorized Users may access the Licensed Database over the Internet via the Licensee's Internet Protocol (IP) address(es). In addition, Licensee and Authorized Users may use the Licensed Database at Authorized Sites, provided that Licensee agrees to be bound by the terms of use contained in this Agreement, and further provided that Licensee agrees to indemnify and hold harmless Licensor for any breach of those terms of use by the Authorized Users. Licensee 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.

c. Licensee may not duplicate, nor shall it knowingly permit third parties to duplicate, the Licensed Database(s) in hardcopy or machine-readable form without prior written authorization from Licensor, except as provided below and in Section 5 c.:

i. Redistribution and Interlibrary Loan. Licensee may reproduce limited portions of the Licensed Database(s) and redistribute the results of searches among the Authorized Users, and perform interlibrary loan of materials from the Licensed Database(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.

ii. Personal and classroom use: Licensee is granted permission to reproduce small, discrete portions of the Licensed Database(s) that do not contain a significant segment of the Licensed Database(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. Licensee may make one or more hard copies of the output of any Licensed Database(s) search; Licensee may not sell or distribute such copies to anyone other than an Authorized User. Licensee may make one or more copies of any search output on diskette or downloaded to hard disk; but Licensee may not sell or distribute such copies to anyone who is not an Authorized User.

iii. Licensee may provide electronic links to the Licensed Database from Licensee's web page(s) for Authorized Users provided that Licensee agrees to indemnify and hold harmless Licensor for any breach of those terms of use by the Authorized Users. Licensee 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. Licensor's staff will provide reasonable assistance to Licensee upon request in creating such links. Licensee agrees to make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by Licensor and in no event shall Licensee use Licensor's trade names or trademarks in such a way as to mislead users to believe that Licensee is the source of the Licensed Database or that Licensor is endorsing Licensee's web pages. Licensee may link the records in Licensee's bibliographic computing system to the content records in the Licensed Database using standard Internet communications and applications protocols, and such other methods as may be reasonably requested by Licensee and approved by Licensor. Licensee shall not modify, manipulate, or create a derivative work of the Licensed Database without the prior written permission of Licensor.

d. Licensee may not: sell, distribute or in any other way commercially exploit the Licensed Database(s); transfer, assign or sublicense the licenses granted herein; transfer the software component of the Licensed Database(s) to diskette, hard disk, or magnetic tape; nor knowingly permit the Licensed Database(s) to be used by any device, equipment, hardware or system that would permit copying of the entire contents of the database, except as permitted in Section 5 c.

e. Additional Rights/Restrictions. In addition to the above, authorized users may/ may not:

_____

_____

3. **Fees.**

   a. Licensee shall pay Licensor the fees more fully set forth in **Appendix A.**

4. **Warranties.**

   a. Online System Warranty. Licensor shall use commercially reasonable efforts to provide continuous availability of the online database, 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 the Licensor.

   The Licensor shall use reasonable efforts to provide an average of 98% up-time per month. The 2% down-time includes scheduled maintenance and repair. Scheduled down-time will be performed at a time to minimize inconvenience to customers world-wide.

   b. Disclaimer. Although Licensor believes the Licensed Database(s) to be reliable, Licensor does not guarantee or warrant any information or materials contained in or produced by the Licensed Database(s), or the accuracy, completeness or reliability of the Licensed Database(s). Any data or information contained in or provided in connection with the Licensed Database(s) may be incomplete or condensed. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT,LICENSOR PROVIDES THE LICENSED DATABASE ON AN "AS IS" BASISWITHOUT WARRANTY OF ANY KIND AND LICENSOR DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED,INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS OR A PARTICULAR PURPOSE. IN NO EVENT SHALL LICENSOR BE LIABLE FOR:
   INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING FOR LOST PROFITS, LOST DATA, OR OTHERWISE. IN NO EVENT SHALL LICENSOR'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 DATABASE.

   c. Indemnification. Licensor shall defend, indemnify, and hold harmless Licensee, their officers, agents and employees from all damages, liabilities, costs, fees, including, but not limited to, attorneys' fees, resulting from any judgment or settlement agreement arising out of the claim of a third party that Licensor's sale of products to Licensee or Licensee's use of said products constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. Licensee shall give prompt notice of an infringement claim to Licensor, provide such cooperation and assistance to Licensor as is reasonably necessary to defend the claim,

and shall allow Licensor to have sole control of the defense, provided, however, that Licensee retains the right to participate in the defense at its own expense.

5. Discontinuance of licensed database.

a. The fees recited herein constitute consideration for Licensee's right of access to the Licensed Database(s) for so long as Licensor makes the Licensed Database(s) available online to its general licensee base. When Licensor elects, in the sole exercise of its discretion, to discontinue offering the Licensed Database(s), it shall deliver to Licensee an ASCII file on magnetic tape or CD-ROM or other electronic medium a copy of the Licensed Database(s) to permit Licensee to replicate the Licensed Database(s) on its computer system subject to the terms and conditions of this Agreement.

b. In the event Licensor discontinues offering access to the licensed database(s) to its general Licensee base, and has not delivered all of the images in the Licensed Database(s) identified in Appendix A, licensor shall refund to Licensee an amount equal to the license fee paid hereunder, multiplied by a fraction wherein the number of images delivered is the numerator and the total number of images set forth in Appendix A is the denominator. In the event Licensor discontinues offering the Licensed Database(s) to its general licensee base after it has delivered all of the images in the Licensed Database(s) identified in Appendix A, Licensee shall not be entitled to receive any refund of any fee paid hereunder, in full or on a pro rata basis.

c. In the event that the Licensee elects not to utilize the database on Licensor's server(s) and/or system(s), Licensee may load the database on the Licensee's own server(s) and/or system(s), and may use the database according to the terms of this Agreement. At such time payment of the Annual Service Fee will cease.

6. Term.

a. Term. Subject to earlier termination as herein provided, this Agreement shall begin on the Effective Date and shall continue until Licensee permanently discontinues use of the licensed database.

b. Default. Either party may terminate this Agreement by written notice stating such party's intent to terminate, in the event the other party shall have defaulted or occasioned a material breach 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. Grounds for termination shall include 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.

c. Upon termination of this agreement, Licensor shall provide Licensee with one (1) complete ASCII tape, set of CD-ROMs (or their equivalent at Licensor's option)

containing the content previously licensed by and accessible to Licensee as of the date of such termination. Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use such content in accordance with the terms of this Agreement, which terms shall survive any termination of this Agreement.

7. Proprietary Rights and Confidentiality.

a. Propriety Rights of Company. Licensor shall retain sole and exclusive right, title and interest in and to the Licensed Database(s), and no title to or ownership of or other right or interest in the Licensed Database(s), except those conveyed by this Agreement, is transferred to Licensee. Licensee shall have no right to distribute the Licensed Database(s), or any part thereof except as provided in this Agreement.

Licensor agrees it will maintain as confidential the identity of Authorized Users, as well as other identifying information.

Licensor also agrees that Licensee may post redacted copies of this License Agreement on a license web site, provided that all references to prices and names be removed.

8. Usage Data.

a. Licensor agrees to generate, or enable the Licensee to generate, both composite usage data for the consortium and itemized data for individual libraries, on a regular and on-going basis. Licensor agrees to cooperate with the Licensee 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. Licensor agrees that usage data will be posted on the Licensee's internal web site for the use of collection development personnel.

9. Y2K Compliance.

a. Licensor certifies that the Licensed Database is Year 2000 compliant, and will operate properly in the year 2000 and beyond and in situations where dates of the year 2000 are used. For the purposes of this Section 9, "Year 2000 compliant" means that the Licensed Database shall function after January 1, 2000 with the same functionality and in the same manner as it functioned prior to January 1, 2000, provided all software, hardware and operating systems used in conjunction with the Licensed Database also be Year 2000 compliant. Licensee's sole remedy and Licensor's sole liability for breach of this certification shall be for Licensor to remit to Licensee fees paid by the Licensee for the non-complying Licensed Database.

10. General.

a. Entire Agreement. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms, and further agrees that it is the complete and exclusive statement of the agreement of the parties which supersedes and merges all prior proposals, understandings, and all other agreements, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties.

b. 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.

c. Governing Laws. This agreement shall be governed and construed in accordance with the laws of the State of California.

d. 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.

e. Assignment. This Agreement and the License granted to Licensee in this Agreement shall not be assigned or sublicensed by Licensee without the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed. Any purported assignment in violation of this Agreement shall be void. This agreement shall be binding on, and inure to, the benefit of each party's successors' assigns.

f. Force Majeure. Either party shall be excused from performance hereunder during any period and to the extent that it is prevented from performing any obligation pursuant thereto, in whole or in part, as a result of delays caused by the other party or any cause beyond its control, and such nonperformance shall not be a default hereunder or a ground for termination hereof.

g. 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.

h. 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.

i. Counterparts. The execution of counterparts of this Agreement by the parties shall constitute a binding execution of this Agreement.

j. 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.

IN WITNESS WHEREOF, Licensor and Licensee have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

Licensee:	Licensor:
(Signature)	(Signature)
(Name)	(Name)
Associate Director, Shared Content (Title)	Director of Sales (Title)
June 15, 2000 (Date)	June 15, 2000 (Date)

DATA LICENSE AGREEMENT FOR ONLINE INFORMATION SERVICES

Digital Archive Option

Appendix A: Price, Payment and Interest

1. The Digital Archive Option price(s) shall be as follows:

Product(s)	Price	Annual Service Fee
Declassified Documents Reference System Online (DDRS Online)	$	$
Total:	$	$

2. Delivery Dates and Image Counts:

Product	Image Count	Delivery Date	Cumulative Image Count Total
DDRS Online	407,000 images	Dec. 31, 1999	407,000
	25,000 additional images	Dec. 31, 2000	432,000
	25,000 additional images	Dec. 31, 2001	457,000
	25,000 additional images	Dec. 31, 2002	482,000

3. Payment Terms:

Payment terms are net thirty (30) days from date of invoice, unless otherwise specified as follows.

DATA LICENSE AGREEMENT FOR ONLINE INFORMATION SERVICES

Digital Archive Option

Appendix B: List of University of California Partner Schools

No.	UC Partner	High School Partner	School District	County
1	Berkeley	Berkeley H.S.	Berkeley Unified	Alameda
2	Berkeley	Fremont H.S.	Oakland Unified	Alameda
3	Berkeley	El Cerrito H.S.	West Contra Costa Unified	Contra Costa
4	Berkeley	Kennedy H.S.	West Contra Costa Unified	Contra Costa
5	Berkeley	Ida B. Wells H.S.	San Francisco Unif.	San Francisco
6	Berkeley	International Studies Academy H.S.	San Francisco Unif.	San Francisco
7	Berkeley	Lowell H.S.	San Francisco Unif.	San Francisco
8	Berkeley	Raoul Wallenberg Traditional H.S.	San Francisco Unif.	San Francisco
9	Berkeley	George Washington H.S.	San Francisco Unif.	San Francisco
10	Berkeley/ U.C.S.F.	Thurgood Marshall H.S.	San Francisco Unif.	San Francisco
11	Berkeley/ U.C.S.F.	Phil. & Sala Burton H.S.	San Francisco Unif.	San Francisco
12	Davis	Valley H.S.	Elk Grove Unified	Sacramento
13	Davis	Grant Union H.S.	Grant Joint Union H.	Sacramento
14	Davis	Sacramento H.S.	Sacramento City Unified	Sacramento
15	Irvine	Dominguez H.S.	Compton Unified	Los Angeles
16	Irvine	Santiago H.S.	Garden Grove Unif.	Orange
17	Irvine	Costa Mesa H.S.	Newport-Mesa Unif.	Orange
18	Irvine	Estancia H.S.	Newport-Mesa Unif.	Orange
19	Irvine	Century H.S.	Santa Ana Unified	Orange
20	Irvine	Saddleback H.S.	Santa Ana Unified	Orange

21	Irvine	Santa Ana H.S.	Santa Ana Unified	Orange
22	Irvine	Valley H.S.	Santa Ana Unified	Orange
23	Los Angeles	Inglewood H.S.	Inglewood Unified	Los Angeles
24	Los Angeles	Lynwood H.S.	Lynwood Unified	Los Angeles
25	Los Angeles	Venice Sr. H.S.	Los Angeles Unif.	Los Angeles
26	Los Angeles	Westchester H.S.	Los Angeles Unif.	Los Angeles
27	Los Angeles	Morningside H.S.	Inglewood Unified	Los Angeles
28	Los Angeles	Crenshaw H.S.	Los Angeles Unif.	Los Angeles
29	Los Angeles	Dorsey H.S.	Los Angeles Unif.	Los Angeles
30	Los Angeles	Fremont H.S.	Los Angeles Unif.	Los Angeles
31	Los Angeles	Garfield H.S.	Los Angeles Unif.	Los Angeles
32	Los Angeles	Jefferson H.S.	Los Angeles Unif.	Los Angeles
33	Los Angeles	Jordan H.S.	Los Angeles Unif.	Los Angeles
34	Los Angeles	Locke H.S.	Los Angeles Unif.	Los Angeles
35	Los Angeles	Manual Arts H.S.	Los Angeles Unif.	Los Angeles
36	Los Angeles	Roosevelt H.S.	Los Angeles Unif.	Los Angeles
37	Los Angeles	San Fernando Sr.H.S.	Los Angeles Unif.	Los Angeles
38	Los Angeles	South Gate Sr. H.S.	Los Angeles Unif.	Los Angeles
39	Los Angeles	Washington Prep.H.S.	Los Angeles Unif.	Los Angeles
40	Merced	Hoover H.S.	Fresno Unified	Fresno
41	Merced	Parlier H.S.	Parlier Unified	Fresno
42	Riverside	North Vista H.S.	Alvord Unified	Riverside
43	Riverside	Indio H.S.	Desert Sands Unif.	Riverside
44	Riverside	Rubidoux H.S.	Jurupa Unified	Riverside
45	Riverside	North (John W.)H.S.	Riverside Unified	Riverside
46	Riverside	Rancho Verde H.S.	Val Verde Unified	Riverside
47	Riverside	Colton H.S.	Colton Joint Unif.	San Bernardino
48	Riverside	Eisenhower H.S.	Rialto Unified	San Bernardino
49	San Diego	Crawford H.S.	San Diego City Unif.	San Diego
50	San Diego	San Diego H.S.	San Diego City Unif.	San Diego
51	San Diego	Mar Vista H.S.	Sweetwater Union	San Diego
52	San Diego	Sweetwater H.S.	Sweetwater Union	San Diego
53	San Francisco	Balboa H.S.	San Francisco Unif.	San Francisco
54	San Francisco	J. Eugene McAteer H.S.	San Francisco Unif.	San Francisco
55	San Francisco	John O'Connell H.S.	San Francisco Unif.	San Francisco
56	San Francisco/ Berkeley	Galileo H.S.	San Francisco Unif.	San Francisco
57	San Francisco/ Berkeley	Mission H.S.	San Francisco Unif.	San Francisco

58	Santa Barbara	South H.S.	Kern Union H.S.	Kern
59	Santa Barbara	Lompoc H.S.	Lompoc Unified	Santa Barbara
60	Santa Barbara	Santa Maria H.S.	Santa Maria Joint Union	Santa Barbara
61	Santa Barbara	Fillmore H.S.	Fillmore Unified	Ventura
62	Santa Barbara	Channel Islands H.S.	Oxnard Union High	Ventura
63	Santa Barbara	Hueneme H.S.	Oxnard Union High	Ventura
64	Santa Barbara	Santa Paula H.S.	Santa Paula Union H.	Ventura
65	Santa Cruz	Atwater H.S.	Merced Union High	Merced
66	Santa Cruz	Golden Valley H.S.	Merced Union High	Merced
67	Santa Cruz	Livingston H.S.	Merced Union High	Merced
68	Santa Cruz	Merced H.S.	Merced Union High	Merced
69	Santa Cruz	Seaside H.S.	Monterey Peninsula Unified	Monterey
70	Santa Cruz	N. Monterey County H.S.	N. Monterey County	Monterey
71	Santa Cruz	Alvarez (Everett)H.S.	Salinas Union H.S.	Monterey
72	Santa Cruz	Salinas H.S.	Salinas Union H.S.	Monterey
73	Santa Cruz	San Benito H.S.	San Benito High	San Benito
74	Santa Cruz	Overfelt (Wm.C.)H.S.	East Side Union High	Santa Clara
75	Santa Cruz	Willow Glen H.S.	San Jose Unified	Santa Clara
76	Santa Cruz	Aptos H.S.	Pajaro Valley Joint U.	Santa Cruz
77	Santa Cruz	Watsonville H.S.	Pajaro Valley Joint U.	Santa Cruz