

CONTRACT #9
RFS # 305.04-01913
FA # Pending
Edison # 4330

Department of State
Library and Archives

VENDOR:
The Gale Group, Inc.

Tre Hargett, Secretary of State
State of Tennessee



Tennessee State Library and Archives
403 7th Avenue North
Nashville, TN 37243-1409

Charles Sherrill
State Librarian and Archivist

615-741-7996
Chuck.Sherrill@tn.gov

MEMORANDUM

To: Fiscal Review Committee
Attn: Leni Chick

From: Charles A. Sherrill

Date: October 29, 2012

Subject: Request for non-competitive contract review – Gale Group, Inc.

Attachment: 1 contract and corresponding documentation

CC:

Please find attached a draft contract between the Tennessee State Library and Archives and the Gale Group, Inc., along with the corresponding documentation. The contract would allow the continuation of hosting and maintenance fees for Literature Resource Center, an exclusive service from The Gale Group, Inc.

If you need any further information or clarification, please contact me.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Wendy Cornelisen	*Contact Phone:	615-532-4627		
*Original Contract Number:		*Original RFS Number:	30504-01913		
Edison Contract Number: <i>(if applicable)</i>		Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	January 1, 2013	*Current End Date:	December 31, 2017		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:		Department of State			
*Division:		Tennessee State Library and Archives			
*Date Submitted:		October 29, 2013			
*Submitted Within Sixty (60) days:		yes			
<i>If not, explain:</i>					
*Contract Vendor Name:		The Gale Group, Inc.			
*Current Maximum Liability:		\$665,000			
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:12/13	FY:13/14	FY14/15	FY15/16	FY16/17	FY 17/18
\$66,500	\$133,000	\$133,000	\$133,000	\$133,000	\$66,500
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:12/13	FY:13/14	FY14/15	FY15/16	FY16/17	
0					
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					
*Contract Funding	State:		Federal:	\$665,500	

Supplemental Documentation Required for
Fiscal Review Committee

Source/Amount:			
Interdepartmental:		<i>Other:</i>	
If "other" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>			
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$665,000	

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description :	FY:12/13	FY:13/14	FY:14/15	FY:15/16	FY:16/17	FY:17/18
6 months of service	\$66,500	\$133,000	\$133,000	\$133,000	\$133,000	\$66,500

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description :	FY:	FY:	FY:	FY:	FY:

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other	FY:	FY:	FY:	FY:	FY:



Monday, October 8, 2012

Re: Sole Publisher/Sole Source Verification

Wendy Cornelisen
Tennessee State Library and Archives
403 7th Ave N
Nashville, TN 37243-1409

Dear Ms. Wendy Cornelisen:

This is in response to any questions or concerns regarding the purchase and/or subscription of The Gale Group, Inc. (Gale, a part of Cengage Learning) titles and databases.

Gale is the sole publisher of Gale print publications, which includes (but are not limited to) Macmillan Reference USA, Twayne Publishers, Charles Scribner's Sons, Greenhaven Press, Lucent Books, KidHaven Press, Blackbirch Press, U·X·L, and Thorndike Press (Large Print editions only) imprint lines.

Gale is the sole source vendor and supplier for the electronic database products we make available for purchase to the Tennessee State Library including: Literature Resource Center and all its hosting fees.

If you need to reprint any information from any of our publications, a request must be made in writing to our Permissions Department. We hold all rights to all Gale publications and its imprints.

Thank you for your interest in Gale. Please contact me if I can be of any further assistance.

Regards,

A handwritten signature in cursive script that reads "Helen A. Wilbur".

Helen A. Wilbur
Vice President
Consortia and Major Accounts



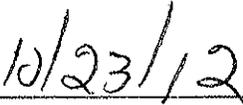
OIR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Jane Chittenden, OIR Procurement & Contract Management Director
Department of Finance & Administration
E-mail : Jane.Chittenden@tn.gov

FROM : Wendy Cornelisen
E-mail : wendy.cornelisen@tn.gov

DATE : 10-23-2012

RE : Request for OIR Pre-Approval Endorsement

Applicable RFS # 30504-01913
OIR Endorsement Signature & Date:   Chief Information Officer
<i>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</i>

Office for Information Resources (OIR) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with information technology as a component of the scope of service. This request seeks to ensure that OIR is aware of and has an opportunity to review the procurement detailed below and in the attached documents.

Please document OIR endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

Contracting Agency	Tennessee State Library & Archives
Agency Contact (name, phone, e-mail)	Wendy Cornelisen, 615-532-4627, wendy.cornelisen@tn.gov
Subject Procurement Document (mark one)	
<input type="checkbox"/> RFP	<input type="checkbox"/> Contract
<input type="checkbox"/> Competitive Negotiation Request	<input type="checkbox"/> Contract Amendment
<input type="checkbox"/> Alternative Procurement Method Request	<input type="checkbox"/> Grant
<input checked="" type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment
<input type="checkbox"/> Non-Competitive Amendment Request	
Information Systems Plan (ISP) Project Applicability	
<input checked="" type="checkbox"/> Not Applicable to this Request	
<input type="checkbox"/> Applicable- ISP Project#	
Response Confirmed by IT Director/Staff (name):	

Applicable RFS # 30504-01913
Required Attachments (as applicable – copies without signatures acceptable) <ul style="list-style-type: none"><input checked="" type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request<input type="checkbox"/> Original Contract/Grant or Amendment<input type="checkbox"/> Proposed Contract/Grant or Amendment
Subject Information Technology Service Description (Brief summary of information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract & solicitation sections related to the IT services.) Internet access is involved, as the impact on information technology services will be for a state-wide vendor-hosted literature resource product for public use.

Non-Competitive Contract Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.
Route a completed request, as one file in PDF format, via e-mail attachment sent to: AgSprs.Agsprs@state.tn.us

APPROVED

Jessica Roberts
Chief Procurement Officer
COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	30504-01913	
1. Contracting Agency	Tennessee Department of State, Tennessee State Library and Archives	
2. Proposed Contractor	The Gale Group, Inc.	
3. Proposed Contract Period – with ALL options to extend exercised The proposed contract start date shall follow the approval date of this request.	60 months	
4. Maximum Contract Cost – with ALL options to extend exercised	\$ 665,000	
5. Office for Information Resources Endorsement – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
6. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
7. Human Resources Support – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
8. Has the contracting agency bought the subject service before?		
<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, It was procured by... <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Another Competitive Method <input type="checkbox"/> Non-Competitive Negotiation		
9. Service Description – brief <u>summary</u> only – do NOT restate the proposed scope of service		
<p>Continue maintenance and hosting services for Literature Resource Center, an online library database provided through the Tennessee Electronic Library, via The Gale Group, Inc. Literature Resource Center includes:</p> <ul style="list-style-type: none"> • More than 850,000 full-text journal articles from over 360 literacy journals • Nearly 3,000 author portraits • More than 122,000 author biographies • 77,000 critical essays, work overviews, and summaries • Nearly 6,000 links to authoritative related web sites 		
10. Explanation of Need for or Requirement Placed on the State to Acquire the Service		
<p>The State Library has purchased perpetual access to Literature Resource Center, a proprietary resource from Gale. This contract will allow for continued, seamless online access</p>		

Request Tracking #	30504-01913
to the resources with no need for the State to load or maintain any hardware or software.	
11. Name & Address of the Contractor's Principal Owner(s) – NOT required for a TN state education institution 27500 Drake Road Farmington Hills, MI 48331-3635	
12. Evidence Contractor's Experience & Length Of Experience Providing the Service The Gale Group, Inc. first created Literature Resource Center in 1997, and it has been widely popular around the country. It was added to TEL via subscription in 2005, with perpetual access purchased in 2007.	
13. Efforts to Identify Reasonable, Competitive, Procurement Alternatives There are no other procurement alternatives, as Gale is the only provider of the database and the maintenance thereto.	
14. Justification – specifically explain why non-competitive negotiation is in the best interest of the state As this is a database that is exclusive to Gale, the maintenance of the database is solely provided by Gale.	
Agency Head Signature and Date – MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances  10/26/12	



Monday, October 8, 2012

Re: Sole Publisher/Sole Source Verification

Wendy Cornelisen
Tennessee State Library and Archives
403 7th Ave N
Nashville, TN 37243-1409

Dear Ms. Wendy Cornelisen:

This is in response to any questions or concerns regarding the purchase and/or subscription of The Gale Group, Inc. (Gale, a part of Cengage Learning) titles and databases.

Gale is the sole publisher of Gale print publications, which includes (but are not limited to) Macmillan Reference USA, Twayne Publishers, Charles Scribner's Sons, Greenhaven Press, Lucent Books, KidHaven Press, Blackbirch Press, U·X·L, and Thorndike Press (Large Print editions only) imprint lines.

Gale is the sole source vendor and supplier for the electronic database products we make available for purchase to the Tennessee State Library including: Literature Resource Center and all its hosting fees.

If you need to reprint any information from any of our publications, a request must be made in writing to our Permissions Department. We hold all rights to all Gale publications and its imprints.

Thank you for your interest in Gale. Please contact me if I can be of any further assistance.

Regards,

A handwritten signature in cursive script that reads "Helen A. Wilbur".

Helen A. Wilbur
Vice President
Consortia and Major Accounts



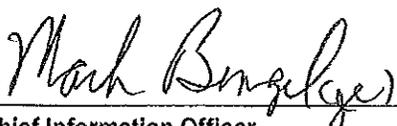
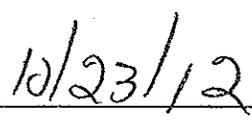
OIR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Jane Chittenden, OIR Procurement & Contract Management Director
Department of Finance & Administration
E-mail : Jane.Chittenden@tn.gov

FROM : Wendy Cornelisen
E-mail : wendy.cornelisen@tn.gov

DATE : 10-23-2012

RE : Request for OIR Pre-Approval Endorsement

Applicable RFS #	30504-01913
OIR Endorsement Signature & Date:	
 	
Chief Information Officer	
<i>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</i>	

Office for Information Resources (OIR) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with information technology as a component of the scope of service. This request seeks to ensure that OIR is aware of and has an opportunity to review the procurement detailed below and in the attached documents.

Please document OIR endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

Contracting Agency	Tennessee State Library & Archives
Agency Contact (name, phone, e-mail)	Wendy Cornelisen, 615-532-4627, wendy.cornelisen@tn.gov
Subject Procurement Document (mark one)	
<input type="checkbox"/> RFP	<input type="checkbox"/> Contract
<input type="checkbox"/> Competitive Negotiation Request	<input type="checkbox"/> Contract Amendment
<input type="checkbox"/> Alternative Procurement Method Request	<input type="checkbox"/> Grant
<input checked="" type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment
<input type="checkbox"/> Non-Competitive Amendment Request	
Information Systems Plan (ISP) Project Applicability	
<input checked="" type="checkbox"/> Not Applicable to this Request	
<input type="checkbox"/> Applicable- ISP Project#	
Response Confirmed by IT Director/Staff (name):	

Applicable RFS # 30504-01913
Required Attachments (as applicable -- copies without signatures acceptable) <input checked="" type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request <input type="checkbox"/> Original Contract/Grant or Amendment <input type="checkbox"/> Proposed Contract/Grant or Amendment
Subject Information Technology Service Description (Brief summary of information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract & solicitation sections related to the IT services.) Internet access is involved, as the impact on information technology services will be for a state-wide vendor-hosted literature resource product for public use.



CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date January 1, 2013	End Date December 31, 2017	Agency Tracking # 30504-01913	Edison Record ID
Contractor Legal Entity Name The Gale Group, Inc.			Edison Vendor ID 4330

Service Caption (one line only)
Hosting and maintenance fees for Literature Resource Center

Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA # 45.310
--	------------------

Funding --					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013		66,500			66,500
2014		133,000			133,000
2015		133,000			133,000
2016		133,000			133,000
2017		133,000			133,000
2018		66,500			66,500
TOTAL:		665,000			665,000

American Recovery and Reinvestment Act (ARRA) Funding: YES NO

Ownership/Control

African American Asian Hispanic Native American Female

Person w/Disability Small Business Government NOT Minority/Disadvantaged

Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input checked="" type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
<input type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Paul Case

OCR USE - FA

Speed Chart (optional)	Account Code (optional)
------------------------	-------------------------

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF STATE,
TENNESSEE STATE LIBRARY AND ARCHIVES
AND
THE GALE GROUP, INC.**

This Contract, by and between the State of Tennessee, Department of State, Tennessee State Library and Archives, hereinafter referred to as the "State" and The Gale Group, Inc., hereinafter referred to as the "Contractor," is for the provision of hosting and maintenance fees for online literature resources, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.
Contractor Place of Incorporation or Organization: Michigan
Contractor Edison Registration ID # 4330

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall provide hosting and maintenance for Literature Resource Center, an online literature resource database.
- A.3. Access to the service must be available twenty-four (24) hours a day, seven (7) days a week with notice given to the State if scheduled downtime is to occur. Scheduled downtime must have minimal impact on end users with less than 1% of users being turned away per year. Service must include unlimited remote and on-site access for all eligible libraries, networks and systems.
- A.4. Access will be provided to those with internet access in Tennessee, including students, faculty, and staff of K-12 public and private schools; students, faculty, staff and patrons of public and private academic institutions; patrons and staff of public libraries; and clientele and staff of not-for profit special libraries. This will translate into a variety of access options from remote access for academic and school students through a campus network to dial-up access through commercial internet service providers (ISPs) for home access.
- A.5. Participating institutions use a variety of protocols to access electronic materials, but the World Wide Web (HTTP protocol) is the preferred method of access.
- A.6. Participating institutions use a variety of discovery and catalog integration methods, with bibliographic records in MARC format and link resolvers being the preferred formats.
- A.7. The State contracts with a third-party vendor for geo-location authentication services. The Contractor will be required to participate in this authentication mechanism.
- A.8. The Contractor must provide routine statistical reports as well as the capability to run reports on an as-needed basis. These reports must be configurable to run on consortium and individual library levels.
- A.9. The Contractor must provide and maintain institutional and consortial confidentiality and user confidentiality and privacy.
- A.10. The Contractor must provide advance notification of changes to the databases, including notices of changes in system design, scheduled down time, additions and deletions of titles, full-text coverage, etc.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning January 1, 2013, and ending on December 31, 2017. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed six hundred sixty five thousand dollars (\$665,000). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount January 1, 2013-December 31, 2017
BI-ANNUAL FLAT FEE FOR ALL PROPOSED SERVICES AS ENUMERATED IN SECTION A	\$ 66,500/per 6 months

The Contractor shall submit invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Wendy Cornelisen
Special Projects Coordinator
Tennessee State Library & Archives
403 7th Ave North
Nashville TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Tennessee State Library & Archives, TEL
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of

Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.

- C.9. **Prerequisite Documentation.** The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. **Required Approvals.** The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. **Termination for Convenience.** The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. **Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment One, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Wendy Cornelisen
Tennessee State Library and Archives
403 Seventh Avenue North
Nashville TN 37243
wendy.cornelisen@tn.gov
Telephone # 615-532-4627
FAX # 615-532-9904

The Contractor:

Jacqui Liepshutz
Senior Account Executive
The Gale Group, Inc.
27500 Drake Road
Farmington Hills, MI 48333-3535
jacqueline.liepshutz@cengage.com
Telephone # 1-800-877-4253, ext 8585
FAX # 248-699-8072

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- E.6. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds

that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).

Executive means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.

- c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

IN WITNESS WHEREOF,

THE GALE GROUP, INC.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE STATE LIBRARY AND ARCHIVES:

CHARLES A. SHERRILL, STATE LIBRARIAN AND ARCHIVIST

DATE

DEPARTMENT OF STATE, OFFICE OF THE SECRETARY OF STATE:

TRE HARGETT, SECRETARY OF STATE

DATE

TH

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation **MUST** be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Wendy Cornelisen	*Contact Phone:	615-532-4627		
*Original Contract Number:		*Original RFS Number:	30504-01913		
Edison Contract Number: <i>(if applicable)</i>		Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	January 1, 2013	*Current End Date:	December 31, 2017		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	Department of State				
*Division:	Tennessee State Library and Archives				
*Date Submitted:	October 23, 2013				
*Submitted Within Sixty (60) days:	yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	The Gale Group, Inc.				
*Current Maximum Liability:	\$665,000				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:12/13	FY:13/14	FY14/15	FY15/16	FY16/17	FY 17/18
\$66,500	\$133,000	\$133,000	\$133,000	\$133,000	\$66,500
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:12/13	FY:13/14	FY14/15	FY15/16	FY16/17	
0					
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					
*Contract Funding	State:		Federal:	\$665,500	

Supplemental Documentation Required for
Fiscal Review Committee

Source/Amount:				
Interdepartmental:			<i>Other:</i>	
If " <i>other</i> " please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Method of Original Award: <i>(if applicable)</i>				
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$665,000		

Supplemental Documentation Required for
Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description :	FY:12/13	FY:13/14	FY:14/15	FY:15/16	FY:16/17	FY:17/18
6 months of service	\$66,500	\$133,000	\$133,000	\$133,000	\$133,000	\$66,500

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description :	FY:	FY:	FY:	FY:	FY:

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other	FY:	FY:	FY:	FY:	FY:

Supplemental Documentation Required for
Fiscal Review Committee

Vendor Cost: (name of vendor)					



CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date January 1, 2013	End Date December 31, 2017	Agency Tracking # 30504-01913	Edison Record ID
Contractor Legal Entity Name The Gale Group, Inc.			Edison Vendor ID 4330

Service Caption (one line only)
Hosting and maintenance fees for Literature Resource Center

Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA # 45.310
---	-------------------------

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013		66,500			66,500
2014		133,000			133,000
2015		133,000			133,000
2016		133,000			133,000
2017		133,000			133,000
2018		66,500			66,500
TOTAL:		665,000			665,000

American Recovery and Reinvestment Act (ARRA) Funding: YES NO

Ownership/Control

African American Asian Hispanic Native American Female
 Person w/Disability Small Business Government NOT Minority/Disadvantaged
 Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input checked="" type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
<input type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.	OCR USE - FA
<i>JWR PG</i> 	

Speed Chart (optional)	Account Code (optional)
-------------------------------	--------------------------------

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF STATE,
TENNESSEE STATE LIBRARY AND ARCHIVES
AND
THE GALE GROUP, INC.**

This Contract, by and between the State of Tennessee, Department of State, Tennessee State Library and Archives, hereinafter referred to as the "State" and The Gale Group, Inc., hereinafter referred to as the "Contractor," is for the provision of hosting and maintenance fees for online literature resources, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.
Contractor Place of Incorporation or Organization: Michigan
Contractor Edison Registration ID # 4330

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall provide hosting and maintenance for Literature Resource Center, an online literature resource database.
- A.3. Access to the service must be available twenty-four (24) hours a day, seven (7) days a week with notice given to the State if scheduled downtime is to occur. Scheduled downtime must have minimal impact on end users with less than 1% of users being turned away per year. Service must include unlimited remote and on-site access for all eligible libraries, networks and systems.
- A.4. Access will be provided to those with internet access in Tennessee, including students, faculty, and staff of K-12 public and private schools; students, faculty, staff and patrons of public and private academic institutions; patrons and staff of public libraries; and clientele and staff of not-for profit special libraries. This will translate into a variety of access options from remote access for academic and school students through a campus network to dial-up access through commercial internet service providers (ISPs) for home access.
- A.5. Participating institutions use a variety of protocols to access electronic materials, but the World Wide Web (HTTP protocol) is the preferred method of access.
- A.6. Participating institutions use a variety of discovery and catalog integration methods, with bibliographic records in MARC format and link resolvers being the preferred formats.
- A.7. The State contracts with a third-party vendor for geo-location authentication services. The Contractor will be required to participate in this authentication mechanism.
- A.8. The Contractor must provide routine statistical reports as well as the capability to run reports on an as-needed basis. These reports must be configurable to run on consortium and individual library levels.
- A.9. The Contractor must provide and maintain institutional and consortial confidentiality and user confidentiality and privacy.
- A.10. The Contractor must provide advance notification of changes to the databases, including notices of changes in system design, scheduled down time, additions and deletions of titles, full-text coverage, etc.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning January 1, 2013, and ending on December 31, 2017. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed six hundred sixty five thousand dollars (\$665,000). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount January 1, 2013-December 31, 2017
BI-ANNUAL FLAT FEE FOR ALL PROPOSED SERVICES AS ENUMERATED IN SECTION A	\$ 66,500/per 6 months

The Contractor shall submit invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Wendy Cornelisen
Special Projects Coordinator
Tennessee State Library & Archives
403 7th Ave North
Nashville TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Tennessee State Library & Archives, TEL
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of

Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.

- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment One, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*

D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Wendy Cornelisen
Tennessee State Library and Archives
403 Seventh Avenue North
Nashville TN 37243
wendy.cornelisen@tn.gov
Telephone # 615-532-4627
FAX # 615-532-9904

The Contractor:

Jacqui Liepshutz
Senior Account Executive
The Gale Group, Inc.
27500 Drake Road
Farmington Hills, MI 48333-3535
jacqueline.liepshutz@cengage.com
Telephone # 1-800-877-4253, ext 8585
FAX # 248-699-8072

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

E.6. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds

that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

Executive means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.

- c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

IN WITNESS WHEREOF,

THE GALE GROUP, INC.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE STATE LIBRARY AND ARCHIVES:

CHARLES A. SHERRILL, STATE LIBRARIAN AND ARCHIVIST

DATE

DEPARTMENT OF STATE, OFFICE OF THE SECRETARY OF STATE:

TRE HARGETT, SECRETARY OF STATE

DATE

TH

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION