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## The Times Digital Archive 1785 - 1900 / TDA

2.1 Gale International Limited ("Gale") publishes in electronic form The Times 1785-1985 ("Times Dataset"). The Times Dataset is a newspaper database containing facsimiles of the pages of The Times in image format and is distributed via the Internet and World Wide Web. It is protected by the laws of copyright and equivalent or similar laws throughout the world.

2.2 Gale has entered into three agreements with the Berlin State Library ("BSL") under which the Berlin State Library has acquired an archive of a subset of the Times Dataset and a periodic subscription for the entire Times Dataset (together "the BSL Times Dataset Agreement").

2.3 The Berlin State Library wishes to make available such part of the Times Dataset to which it has a current licence from time to time ("the BSL Times Dataset") to certain German academic institutions.

2.4 Access by those institutions to the BSL Times Dataset is conditional upon those institutions having at all times and in full force and effect a Use Agreement with Gale.

2.5 The Institution named in Clause 1 above ("the Institution") wishes to have access to the BSL Times Dataset on the terms and conditions contained in this Agreement.

2.6 No other terms, conditions or warranties shall apply unless agreed to in writing by Gale.

### 3. TERM

This Use Agreement will begin on the date upon which a copy, executed by an authorised signatory of the Institution, is received by Gale and will continue unless or until terminated in accordance with Clause 10.

### 4. ACCESS TO THE BSL TIMES DATASET

4.1 Save as expressly granted by this Use Agreement, the Institution acquires no right, title or licence in the data and software incorporated in the Times Dataset. All rights not expressly granted are reserved to Gale.

4.2 The use of or access to all or any part of the BSL Times Dataset or any print-outs from the BSL Times Dataset by anyone other than the Institution's Authorised Users (as defined in Clause 4.4) is expressly prohibited.

4.3 If, in the reasonable opinion of Gale or Times Newspaper Limited, any item in the BSL Times Dataset is or may libel or infringe the intellectual property rights of a third party or otherwise be in breach of any applicable regulation or statute, upon notice from Gale, the Institution and its Authorised Users shall promptly destroy any print-outs and paper copies of such item or items and shall delete such item or items held on computer or computer disk by the Institution and its Authorised Users. This obligation shall survive termination of this Use Agreement.

4.4 The Authorised Users of the Institution are:

All currently enrolled full or part-time students, currently employed faculty (whether on a permanent, temporary, contract or visiting basis), teaching staff, administrators and staff of the Institution ("Faculty and Staff").

All persons holding a valid library card (walk in users) from the Institution.

Any individual who does not hold a valid and current library card issued to that individual in person by the Institution but who is permitted by the Institution to access the library services of the Institution at the Authorised Sites in a personal capacity.

Authorised Users may access and use the BSL Times Dataset on any personal computer within the Institution's facilities on a single physical site at the postal and IP address in Clause 1 above ("Institution Library Site") additionally Faculty and Staff may access and use the BSL Times Dataset by remote access via the Institution's library system.

4.5 Under the terms of Gale's agreement with the Berlin State Library, Gale may for a limited period provide access to the BSL Times Dataset to the Institution via Gale's computer systems ("Gale's host site"). Such access

will be conditional upon the Institution providing the Berlin State Library with such registration and technical information as may from time to time reasonably be required by Gale (e.g. site address, the domain name and IP address of the Institution) and the Institution providing such Internet browser software and Internet access from the Institution Library Site to Gale's host site as may be required for access to the BSL Times Dataset. At all times, as between Gale and the Institution, access to the BSL Times Dataset is the responsibility of the Berlin State Library and the Institution, and Gale makes no representation or warranty as to the continued availability of the BSL Times Dataset through the Berlin State Library.

## 5. USE OF THE BSL TIMES DATASET AND GALE SOFTWARE

The Institution and its Authorised Users may:

- (a) search the BSL Times Dataset and display data from it;
- (b) print out reasonable amounts of data from the BSL Times Dataset or copy such data to computer disk for private study and research which will not affect Gale or Times Newspapers Limited's commercial interests or the commercial exploitation of the Times Dataset; and
- (c) make a reasonable number of photocopies of the above print-outs for private study and research; provided such use is bona fide the results of searching the BSL Times Dataset for appropriate data.

## 6. RESTRICTIONS ON USE OF THE BSL TIMES DATASET AND GALE SOFTWARE

The Institution and its Authorised Users may not:

- (a) manipulate the data to create publications or services in print or in electronic form other than as bibliographic references in essays, articles, monographs and similar academic publications;
- (b) use all any part of the BSL Times Dataset for, or as part of the operation of, a service bureau or other business or re-transmit or in any way commercially exploit the BSL Times Dataset;
- (c) reproduce, adapt or convert the BSL Times Dataset or data from it into/onto any other medium, other than as permitted in Clause 5.1;
- (d) attempt to reverse engineer, decompile or disassemble all or any part of any software program incorporated or used in the BSL Times Dataset; or
- (e) sub-licence, sub-contract, distribute or otherwise dispose of or deal in the BSL Times Dataset. Sections 44 a through 63 a of the German Copyright Act complement Sections 5 and 6.

## 7. RIGHTS IN DATA AND SOFTWARE

### 7.1 The Institution

- (a) acknowledges that copyright in the printed The Times 1 785-1985 and in continuation, upon which Gale's electronic Dataset is based, is owned by Times Newspapers Limited; and
- (b) shall not other than is expressly permitted in this Agreement make any extraction or re-utilisation of the contents of the BSL Times Dataset.

7.2 The Institution shall use reasonable endeavours to ensure that its Authorised Users are aware of the intellectual property rights of Gale and Times Newspapers Limited and comply with the terms of this Use Agreement.

7.3 The Institution shall forthwith notify Gale in writing of any actual or suspected or threatened infringement by any Authorised User or third party of the copyright or other rights in the Times Dataset.

## 8. SECURITY

8.1 The Institution shall take action by instruction or agreement with its Users to satisfy its obligations under this Agreement.

8.2 The Institution shall not provide access to the BSL Times Dataset to any person who it knows or has reason to believe is or will be in breach of this Use Agreement.

8.3 The Library User shall use its reasonable endeavours to protect the BSL Times Dataset from unauthorised use, reproduction, publication or distribution.

## 9. SUPPORT FOR THE LIBRARY USER

9.1 For such period as the BSL Times Dataset is made available to the Library User via Gale's host site, the Library User accepts sole responsibility and liability for the provision of Internet browser software for use with the Times Dataset and for the provision of Internet access from the User Library Site to Gale's host site for the Times Dataset.

9.2 Under the terms of its Agreements with the Berlin State Library, Gale may, for a limited period, provide reasonable telephone assistance in the operation of the BSL Times Dataset to technical support staff of the Institution. Where such assistance is provided, Gale shall not supply support for any browser or other software obtained by Institution from any third party and shall not supply any support directly to Institution's other Authorised Users.

## 10. TERMINATION

10.1 In the event of a breach of any of its obligations under this User Agreement the Institution shall have the right to remedy the breach (if capable of remedy) within thirty (30) days from receipt of written notice from Gale. Within the period of such notice the Institution shall make and document every effort to remedy such a breach and shall institute any necessary procedures to prevent future occurrences of such breaches. If the Institution fails to remedy such a breach within the period of thirty (30) days or the breach is not remediable, Gale may (at its option) terminate this Agreement. The Institution acknowledges that whilst Gale investigates a suspected breach, the Berlin State Library or, if applicable, Gale may suspend the Institution's access to the BSL Times Dataset.

10.2 A breach shall include, without limitation, use of the BSL Times Dataset at any location other than the Institution's Library Site, the use of the BSL Times Dataset by a person other than an Authorised User either intentionally or through the negligence of the Institution or as a result of the Institution's failure to comply with its obligations under this Use Agreement and conduct by Authorised Users contrary to the terms of this Use Agreement.

10.3 In the event of regular and persistent breaches of this Use Agreement, Gale may (at its option) terminate this Agreement without serving further notice.

10.4 In the event that the Institution shall become the subject of any relevant law relating to insolvency or shall otherwise be wound-up or dissolved under any applicable law, the Institution shall notify Gale within thirty (30) days. Gale may terminate this Use Agreement forthwith upon occurrence of any such event.

10.5 Either party may terminate this Agreement on 12 months' written notice.

10.6 In the event of termination of this Agreement for whatever reason the Institution shall within fourteen (14) days of the date of termination erase all electronic storage of copies of the data in its possession.

10.7 Termination of this Agreement (however arising) shall be without prejudice to the rights of Gale against Institution arising or accrued prior to date of termination.

## 11. LIMITED WARRANTY

11.1 Gale warrants that it has the right to enter into the Agreement and to deliver the Times Dataset to the Berlin State Library.

11.2 Gale does not exclude or limit its liability in negligence for death or personal injury or otherwise in so far as any exclusion or limitation of liability is void, prohibited or unenforceable by law.

11.4 Access to the BSL Times Dataset is licensed on an "as is" basis and save as expressly provided in this Clause 11, all warranties, representations and conditions whether express or implied by common law or statute relating to the BSL Times Dataset or otherwise to the performance by Gale of its obligations under this Use Agreement including those of merchantability, suitability or fitness for purpose are expressly excluded, save only where such exclusion is void or unenforceable under any law applicable to this Agreement.

11.5 In cases of mere negligence, GALE shall not be liable for any damages.

11.6 In cases of mere negligence, but the violation of contractual core obligations, Gale shall only be liable for direct and immediate damages, however, not for indirect, special or consequential damages including lost profits, lost data, or otherwise. Also, GALE'S liability hereunder, whether arising in contract, tort, in contract, tort, liability or otherwise, shall not exceed Euro 50.000.

## 12. GENERAL

12.1 Any notice shall be deemed to have been duly served if left at or sent by pre-paid post or facsimile transmission to the other party addressed to that party at the address specified in this Use Agreement or to such alternative address as either party may furnish in writing to the other. Any such notice shall be deemed to have been served on the expiry of seven (7) days if sent by post or twenty-four (24) if sent by facsimile transmission. In proving the service of notice it shall be sufficient that the notice was duly delivered or that the envelope containing the notice was properly addressed and posted or that the facsimile was properly addressed and dispatched (as the case may be).

12.2 Any controversy or claim of whatsoever nature arising out of or relating in any manner whatsoever to this Use Agreement or to any breach of the terms of this Agreement shall be governed and construed in all respects in accordance with German law and the parties hereby submit to the non-exclusive jurisdiction of the German Courts. The exclusive place of jurisdiction shall be Munich.

12.3 This Use Agreement constitutes the entire agreement between Gale and the Institution as to the subject matter hereof and supersedes all previous communications, representations and arrangements, either written or oral, and the Institution hereby acknowledges that no reliance is placed on any representation made but not embodied in this Use Agreement.

12.4 The failure of either party to exercise or enforce any rights under this Agreement shall not amount to a waiver of those rights.

12.5 No amendment, variation or discharge of this Use Agreement is valid unless accepted in writing by both parties.

AS WITNESS the hands of the parties or their duly authorised representatives on the date first before written.