

SITE LICENSE

(Literary Research Guide)

This site license (“Agreement”) is made as of _____ (“Effective Date”) between The Modern Language Association of America (“MLA”), with offices at 26 Broadway, New York, New York 10004, United States of America, and _____ (“You” [and grammatical variations] or “Licensee”). We agree as follows.

1. Background

- A. MLA is the publisher of the well known print work, the *Literary Research Guide*, 5th edition, by James L. Harner (“Work”). The Work, a comprehensive, annotated listing of reference sources in English literary studies, is used by students and educators as an aid to scholarly research.
- B. MLA is now making the Work available to libraries in an electronic format for their Authorized Users (defined in Paragraph 3.B.) to read, search, and link to reference sources in a library’s collection or elsewhere (if available on the Web) and to annotate and save searches and citations for later use.
- C. Licensee, having indicated its institution type in the initial order for this License, would like to license the Work for its Authorized Users under the terms of this Agreement. (If a Licensee has libraries on more than one campus, a separate license is required for each campus.)

2. Service

- A. MLA will make the Work available to You from a Web site, with a home page that includes information identifying the Work to Your Authorized Users as being part of Your library’s collection. MLA will activate Your access to the Web site and the Work within three business days after MLA has received both Your acceptance of this agreement and the First-Year Access Fee (“Access Conditions”).
- B. MLA will exercise exclusive control over the content and features of the Work and the frequency and scope of updates to it. MLA may make changes in the Work and Web site and in the accompanying functionality at any time in MLA’s sole discretion, but MLA will use reasonable efforts to do so at times when use of the Work is likely to be low and to ensure that any unavailability of the Work is as brief as possible.
- C. In order to save and annotate searches, Authorized Users will be required to set up an account, create a password, and agree to the Terms of Use (including Privacy Statement) on the Web site <<http://www.mlalrg.org/page/terms-of-use>> (“TOU”). Where the terms of the TOU overlap with this Agreement, the terms of the TOU do not differ materially from, nor are they more restrictive than, the terms of this Agreement.

- D. If You have any questions or problems regarding access or use of the Work, You should contact the MLA customer services office by e-mail (subscrip@mla.org) for assistance.

3. License

- A. On the condition that You comply with all the terms of this Agreement, including Paragraph 4, MLA grants You a license to make the Work available through Your library only to Your Authorized Users (defined in Paragraph 3.B.), only for their own personal research and academic studies in compliance with U.S. copyright laws, and only during the Term (defined in Paragraph 6.A). This license does not authorize any of the following conduct: making the Work available to any person or entity who is not an Authorized User; providing a password to anyone, even another Authorized User; archiving the Work; copying or sending the Work or any part of it to others, including through interlibrary loan; and hacking into MLA's Web site (or attempting to do so).
- B. For purposes of this Agreement, "Authorized Users" means (i) Licensee's enrolled students, faculty, affiliated and visiting researchers, and regular and contract staff, all of whom may access the Work from within Your library or remotely; and (ii) Licensee's authorized walk-in library users, who access the Work from within Your library or from academic facilities that permit access to library resources.

4. License Fee

- A. Before the Term (defined in Paragraph 6.A) begins, You will pay MLA the fee specified in Exhibit A ("First-Year Access Fee") for Your access to and use of the Work during the Term. If the parties renew this Agreement, Licensee must pay the fee specified in Exhibit A for each subsequent annual update ("Update Fee"), within three business days after the annual update term begins. Except as described in Paragraph 6.B.(iii), the First-Year Access Fee and the Update Fee are not refundable.
- B. MLA is solely responsible for all costs associated with making the Work available on the Web.
- C. You are solely responsible for all (i) costs relating to making the Work available to Your Authorized Users, including all Internet connection, service provider, and telecommunication charges and (ii) sales, use, utility, and other taxes applicable to access and use of the Work.

5. Confidentiality

MLA agrees to maintain securely any personally identifying information submitted by You or Authorized Users and searches and annotations saved by Authorized Users on MLA's Web site ("Confidential Information") and will not disclose or permit use of it by anyone except the Authorized User (except to comply with the law or legal process).

MLA will also ensure that anyone who might have access to Confidential Information (e.g., during maintenance) will be similarly required to comply with the confidentiality requirements of this paragraph.

6. Term and Termination

- A. “Term” means the one-year period beginning three business days after You have met the Access Conditions and all subsequent one-year update periods that You subscribe to for as long as the Work is in its 5th edition.
- B. MLA may terminate this Agreement
 - (i) immediately, upon written notice, as specified in Paragraphs 9.D. and 9.H.
 - (ii) upon MLA’s five-day written notice, if You fail to pay within the five-day notice period either the First-Year Access Fee or the Update Fee when due under Paragraph 4; or
 - (iii) automatically once the MLA issues a new edition of the Work or determines that it will no longer make the current edition available. If the Term of Your license is still in effect when the Agreement terminates under this paragraph, MLA will provide You, at Your option, a pro-rated refund or credit the balance of Your First-Year Access Fee (or Update Fee) toward a license to the next edition of the Work.
- C. If MLA determines in its sole discretion that the Work has been or is likely to be used by anyone other than You and Authorized Users, or that You or Authorized Users are using the Work in violation of this Agreement or the TOU, MLA may temporarily suspend Your access or the access of an Authorized User for 14 days upon written notice to You or Authorized Users. During the 14-day suspension period, MLA and You will cooperate in the investigation of the alleged unauthorized use and the determination of what steps are necessary to prevent a reoccurrence of the unauthorized use. If the unauthorized use is not resolved within 14 days of MLA’s notice, Your use or the use of Authorized User(s) will be terminated. If instances of unauthorized use occur repeatedly, MLA may, in its sole discretion, terminate this Agreement or the use by Authorized User(s) completely.

7. Trademark Ownership

- A. MLA acknowledges that Licensee owns whatever trademark rights exist in its name and all associated goodwill. You license to MLA the right to include Licensee’s name on the home page through which Your Authorized Users will gain access to the Work, and MLA will acquire no rights in Your name as a result of that use.
- B. You acknowledge that MLA owns the trademarks “MLA” and “Modern Language Association” and the title *Literary Research Guide* and all associated

goodwill and that You will acquire no rights in any of those marks as a result of any use under this Agreement. You will use MLA's name and trademarks only to describe MLA and its Work accurately and not for any trademark use.

8. Representations, Warranties, And Covenants; Indemnities; Remedies; Defense Of Certain Claims; and Disclaimers.

- A. MLA and You each separately represent, warrant, and covenant to the other that it is duly organized, validly existing, and in good standing under the laws of its respective state of incorporation; and the individual accepting this Agreement on its behalf is authorized to bind it to the terms of this Agreement.
- B. MLA further represents, warrants, and covenants that (i) the rights granted in this Agreement do not infringe any third-party intellectual property rights, including copyrights and trademarks; and (ii) MLA has entered into agreements with any third parties (e.g., hosting or maintenance services) that may have access to Your or Authorized Users' Confidential Information ensuring that they comply with the obligations of Paragraph 5.
- C. MLA will indemnify You, Your officers, directors, employees, and agents for all liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees) You incur from any breach of MLA's representations, warranties, and covenants in Paragraph 8.B. You may at Your own expense be represented by counsel of Your own choosing. MLA may settle a third-party claim so long as it does not admit Your liability or bind You to future conduct without first obtaining Your consent.
- D. You will make commercially reasonable efforts to permit only Authorized Users to access the Work through Your library, including (i) ensuring that Authorized Users are familiar with the terms of Section 3 of this Agreement and with the possibility of termination if they do not comply with their own responsibilities under the TOU; and (ii) taking prompt action, including disciplinary action as appropriate, in cases of unauthorized use. You are responsible for the acts and omissions of Your employees, agents, and officers that result in a breach of this undertaking.
- E. If You breach Your obligation described in Paragraph 8.D., MLA is entitled to exercise the remedy in Paragraph 6.C., which may include termination of this license completely, the reestablishment of which will require a new First-Year Access Fee.
- F. YOU ACCEPT THE WORK LICENSED UNDER THIS AGREEMENT AND THE FUNCTIONALITY PROVIDED ON THE WEB SITE "AS IS." EXCEPT FOR ANY EXPRESS WARRANTIES AND REPRESENTATIONS GIVEN IN THIS PARAGRAPH 8, MLA MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE WORK OR THE FUNCTIONALITY PROVIDED WITH IT ON THE WEB SITE, INCLUDING ANY WARRANTY OF MERCHANTABILITY,

FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT THE PURPOSE OR INTENDED USE HAS BEEN DISCLOSED), TITLE, COMPLETENESS, TIMELINESS, OR CORRECTNESS. MLA DOES NOT WARRANT THAT THE ACCESS TO THE WEB SITE WILL BE UNINTERRUPTED OR ERROR-FREE OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT ERRORS WILL BE CORRECTED.

- G. MLA, its officers, directors, employees, agents, successors, and assigns will not be liable for any claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees and expenses) arising out of or relating to: (i) the loss of any stored research information; (ii) the unavailability or interruption, in whole or part, of the Work or access to it; (iii) Your or any Authorized User's use or misuse of the Work and the Web site (whether or not You received any assistance from MLA's employees in using the Web site); (iv) Your use of any equipment in connection with the Work or Web site; or (v) any delay or failure in performance for reasons beyond MLA's reasonable control.
- H. In no event will MLA, its officers, directors, employees, agents, successors, and assigns be liable in contract, warranty, tort (including negligence), or otherwise to Licensee, any Authorized User, or any other party for any lost profits or any punitive, special, indirect, or consequential damages (whether or not the possibility of such damages has been disclosed).
- I. Except for MLA's indemnity undertaking under Paragraph 8.C., MLA's entire liability (to You or to any Authorized User) for any claim arising out of or relating to the Work and the Web site (or the use of them by You or any Authorized User) will be limited to the Fees paid by Licensee to MLA during the applicable Term.

9. GENERAL PROVISIONS

- A. Notices. All notices required under this Agreement must be in writing and will be considered given: when delivered, if sent personally; one day after sending, if sent by recognized overnight courier service; five days after sending, if sent by certified mail (postage prepaid) to a party at the address below (or to such other address a party designates by notice in accordance with this Paragraph):

To MLA:

Executive Director

Modern Language Association of America
26 Broadway, 3rd floor
New York, NY 10004-1789

646-576-5000

To Licensee:

To the person at the place of business
shown on the initial order for this license.

- B. Entire Agreement; Amendments. This Agreement, the information You provided in Your initial order for a subscription to the Work, and the attached Exhibit A, all of which are incorporated in the Agreement, constitute the complete agreement between the parties and supersede all other agreements, negotiations, and understandings, whether written or oral, regarding the subject matter of this Agreement. No amendment to this Agreement is valid unless in writing and signed by both parties.
- C. Not Joint Venturers. The relationship between MLA and You is solely that of licensor and licensee, and nothing in this Agreement should be construed to constitute a relationship of joint venture, partnership, agency, or third-party beneficiary between MLA and You or any Authorized User. Neither party has the power to obligate or bind the other in any way whatsoever.
- D. No Assignment. You may not assign this Agreement, in whole or in part, or any rights or obligations under it without MLA's prior written consent. Any attempted assignment in violation of this provision is null and void and will constitute a material breach permitting MLA immediately to terminate this Agreement without providing You with an opportunity to correct the breach.
- E. Unenforceability of Terms. If any term of this Agreement is determined to be unenforceable in a particular circumstance, that determination will not affect enforcement of the other terms of this Agreement unless doing so would deprive either You or MLA of a material benefit of the Agreement.
- F. Waiver. No waiver of any term or of any breach of this Agreement will be considered a waiver of the same term or any other breach on a subsequent occasion.
- G. Survival of Certain Terms. The terms of Paragraphs 5, 6.B.(iii), 7, 8, and 9 survive termination or expiration of this Agreement.
- H. Force Majeure. Neither party will be liable for its failure to perform or delay of performance or other default or deficiency under this Agreement caused in whole or in part directly or indirectly by fire, accident, flood, labor trouble or shortage, act of God, armed conflict, acts of terrorism, civil commotion, or other cause of like character beyond its reasonable control that renders the party's performance or timely performance impossible or impracticable. If either party is unable to perform for more than 60 consecutive days (or 90 total days in any twelve-month period) because of an event of force majeure, the other party may terminate this Agreement immediately upon written notice.
- I. Governing Law. The provisions of the Uniform Computer Information Transactions Act do not apply to this Agreement.
- J. Headings; Construction. The headings in this Agreement are for convenience only and should not be used to construe the meaning of any term in it. The term

“including” should be read to be inclusive; it includes the meaning “including, but not limited to.”

- K. Counterparts. This Agreement may be executed in two or more counterparts, each of which is an original, and all of which together constitute one and the same instrument.

[signatures on following page]

IN WITNESS WHEREOF, each of the parties has caused its authorized representative to execute this Agreement.

LICENSEE

**THE MODERN LANGUAGE
ASSOCIATION OF AMERICA**

By: _____
An Authorized Representative

By: _____

Print Name

Rosemary G. Feal

Print Name

Title

Executive Director

Title

Date

Date

The MLA Member and Customer Services staff will need to contact someone at your library to establish service. Please provide the following information:

Name of Library: _____

Name of Contact Person: _____

E-mail Address: _____

Please sign and date two copies of this Agreement and mail to:

MLA Member and Customer Services
26 Broadway, 3rd floor
New York, NY 10004-1789

Site License
(*Literary Research Guide*)

Exhibit A

First-Year Access Fees:*

University Library	\$350
College Library	\$120
Public Library	\$ 80
High School Library	\$ 50

Subsequent Annual Update Fees:*

University Library	\$80
College Library	\$40
Public Library	\$30
High School Library	\$20

*All prices are in U.S. dollars.