

WOMEN WRITERS PROJECT LICENSE FORM FOR INDIVIDUALS

Licensee Name:

Agreement Date:

Licensee Notice Address:

Women Writers Project Notice Address:

Julia Flanders
Women Writers Project
Box 1841, Brown University
Providence, RI 02912.
401-863-2135 (phone)
401-863-9313 (fax)
Julia_Flanders@brown.edu

IP information: If applicable, please list a maximum of two (2) IP addresses to be included in the access permissions, or a user name and password. These IP addresses must identify computers which are used privately by the licensee, not computers which are intended for public use (e.g. in a public computer cluster).

Please describe the locations covered by these IP addresses below (i.e. home, office):

Please provide a password you would like to use for your account:

License starting date:

Duration of license:

The parties agree to be bound by the terms and conditions of the Women Writers Project License Agreement attached hereto, in witness whereof the parties have set their hands as of the Agreement date above.

Brown University:

Licensee:

By:

Name: Harriette Hemmasi

Title: University Librarian

By:

Name:

Title:

Acknowledgement:

By:

Name: Julia Flanders

Title: Director

WOMEN WRITERS PROJECT LICENSE AGREEMENT

AGREEMENT made and entered into this _____ day of _____, 2009 by and between Brown University, a not-for-profit corporation existing under the laws of the State of Rhode Island and Providence Plantations, located in the City of Providence, State of Rhode Island and Providence Plantations, on behalf of its Women Writers Project (hereinafter referred to as "WWP"), and _____ (hereinafter referred to as "Licensee").

1. Definitions

- 1.1. In the following agreement, "we", "us", and "WWP" refer to the Brown University Women Writers Project.
- 1.2. "You" and "Licensee" refer to the individual purchasing a license.
- 1.3. "Authorized Users" means any persons sharing a home, an office, or a personal computer workstation with the Licensee, during the term covered by this license.
- 1.4. "Access" means access from site location using authorized I.P. address sites or domain name, or access via a logon and password.
- 1.5. "The Textbase" refers to the collection of electronically encoded texts which the WWP has produced, and to the electronic product derived therefrom (including the interface and the programming which supports it).
- 1.6. "User Rules" refers to the terms and conditions for use of the Textbase defined herein under Schedule D. A current copy of these rules will also be available at all times at the WWP web site, <<http://www.wwp.brown.edu/>>
- 1.7. "Materials" refers to electronic transcriptions, encoded files, or printouts derived from the Textbase.
- 1.8. "Derivative Work" means a work based upon one or more preexisting works such as a modification, enhancement, adaptation, translation, abridgement or any other form in which such preexisting work may be transformed or incorporated and which, if prepared without authorization of the owner of the copyright or other intellectual property right in such preexisting work, would constitute an infringement of such right.
- 1.9. "Intellectual Property" means any trademarks, copyrights and copyright registrations and applications, rights in ideas, designs, works of authorship, Derivative Works, and all other intellectual property rights relating to the Textbase.

2. Grant of license

The WWP hereby grants to the Licensee a non-exclusive license to use the Textbase as permitted herein (the "License") during the term of this Agreement. The Textbase shall consist of XML-encoded transcriptions of primary source documents by women, written before 1850.

3. Use of the Textbase

- 3.1. Licensee and Authorized Users may use the textbase for purposes of education, scholarship, and personal research in accordance with the user rules set forth in Schedule D.
- 3.2. The Licensee shall make reasonable efforts to prevent anyone other than Authorized Users from using the Textbase. If using password access, the Licensee shall not disclose the logon or password except to persons who ordinarily share the Licensee's computer workstation. In the event of

any unauthorized use of the Textbase by an Authorized User, upon notice to Licensee by WWP, Licensee will use reasonable efforts to remedy the unauthorized use and take corrective action as appropriate.

3.3 Notwithstanding anything to the contrary in this Agreement, no term or provision of this contract shall be interpreted to limit or restrict the "fair use" rights of Licensee and Authorized Users provided by Statute in 17 U.S.C. Sections 107 and 504.

4. Delivery; Support

Licensee is responsible for establishing and maintaining hardware and Internet access to provide access to the Textbase. Licensee understands that Internet browser software is required to access the Textbase. Schedule C attached hereto and incorporated herein sets forth hardware platforms and browsing software required and/or recommended for accessing the Textbase. Licensee understands that from time to time the Textbase may be added to or modified by the WWP, that portions of the Textbase may migrate to other formats, and that the terms of Schedule C may be updated. The WWP shall provide Licensee with advance notice before making any substantial changes in hardware and software requirements or mode of delivery of the textbase, and Licensee shall be entitled to terminate the Agreement with a pro-rated refund of the license fee in accordance with the provisions of Section 6.1 below in the event that the Licensee is opposed to such changes.

5. Fees

Licensee shall make payment to WWP for the License granted herein pursuant to the payment terms set forth on Schedule A.

6. Term and Termination

6.1. The term of this Agreement shall commence July 1 and terminate on June 30 of each year, except that in the first year this Agreement shall commence upon the date of execution by Brown, and will renew for successive one (1) year terms unless earlier terminated by either party by written notice not less than thirty (30) days prior to the end of the then-current term. In the event that WWP's practices and policies necessitate a change in the terms hereof, WWP shall provide Licensee with advance notice before making any substantial changes, and such changes shall be reflected in a revised Agreement signed by both parties. In the event Licensee is opposed to such changes, Licensee shall be entitled to terminate the Agreement with a pro-rated refund of the License Fee. Should a significant portion of the Textbase be deleted or removed from access or in the event of substantial changes in hardware and software requirements or mode of delivery of the Textbase, Licensor will notify Licensee immediately. Licensee will have at least thirty (30) days from receipt of notification to cancel the Agreement and request a pro-rated refund of the license fee.

6.2. In the event that either party believes that the other materially has breached any obligations under this Agreement, or if the WWP believes that the Licensee has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that the cure has been effected. If the breach is not cured within the sixty (60) day period, the non-breaching party shall have the right to terminate this Agreement without further notice. In the event of a breach by the WWP, the Licensee may terminate this agreement and the license fee will be returned to Licensee pro-rated to the date of termination. In addition, the WWP may terminate this Agreement on sixty (60) days' written notice if, in the WWP's reasonable opinion, the cumulative effect of violations of User Rules by Licensee or Authorized Users justifies such termination.

6.3. Except in circumstances of breach by Licensee, upon termination of this agreement the WWP shall provide Licensee with one (1) complete copy of the source data for the Textbase, containing the XML-encoded transcriptions of the documents contained in the Textbase as of the date of such

termination, for a nominal fee to cover administrative costs. In the event that the WWP ceases to exist or ceases offering textbase services as contemplated by this agreement, the WWP hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use such data in accordance with the terms of Section 3 of this Agreement, which terms shall survive any termination of this Agreement. Notwithstanding the foregoing, no use may be made of such data that would serve as a substitute for a License to the Textbase unless the WWP has ceased to exist, or has ceased offering Textbase services as contemplated by this Agreement.

6.4. Upon termination of this Agreement, Licensee shall discontinue any practices which are defined herein as depending on the possession of an active license, including online redelivery of downloaded electronic files, and inclusion of WWP Materials in course packets. Licensee and Authorized Users may retain possession of printed copies of Materials, including course packets and individual electronic files which have been downloaded for personal research, or incorporated into individual research projects or classroom projects.

7. Proprietary Rights

Licensee hereby recognizes and agrees that the Textbase and all Intellectual Property rights residing therein are proprietary to the WWP, subject to the rights of third parties therein. Licensee hereby warrants that it will not, during the term of this Agreement or any time thereafter, attach, dispute or contest, directly or indirectly, the WWP's right and title in and to the Textbase, nor assist or aid others to do so. Neither party may use the other's name or trademark(s) in a way likely to cause confusion as to the origin of goods or services, or to endorse or show affiliation with the other, except as specifically approved.

8. Representations and Warranties

8.1. Each party hereby warrants that it is duly organized and validly subsisting, and has full authority to enter into this Agreement.

8.2. Licensee represents and warrants that (a) the above list of IP addresses, or the password and logon, provided to the WWP in accordance with Section 4.2 above is accurate and valid, (b) the Licensee is providing no IP addresses to the WWP that pertain to any location other than those listed or indicated on page one of this Agreement, or for which access has otherwise been agreed in writing by the WWP, and (c) Licensee shall exert reasonable efforts to maintain sufficient security with respect to such IP addresses or passwords such that no one other than Authorized Users is or will be able to access the Textbase.

8.3 The WWP represents and warrants that it has the right and authority to make the Product available pursuant to these terms and conditions and that the materials, which constitute the Textbase, do not infringe upon any copyright, patent, trade secret or other proprietary right of any third person or party.

8.4. The WWP makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb, or other such computer program. The WWP further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

8.5 If due to causes within the WWP's reasonable control availability of the system falls below 98% of scheduled online hours during any one-month period, this agreement will be extended by one hour for every hour of such unavailability. Should unavailability fall below 98% of scheduled online hours in three or more months of the contract term, subscriber may elect to terminate this agreement with a pro-rata refund upon written notice to the WWP.

8.5. The WWP shall not be liable for any loss, injury, claim, liability or damage of any kind resulting from the unavailability of the Textbase, interruption of the services provided hereafter, or

arising out of or in connection with Licensee's use of Materials. If the Textbase fails to operate in conformance with the terms of this Agreement, Licensee shall immediately notify the WWP, and the WWP's sole obligation shall be to repair the nonconformity. In no event shall the WWP's liability exceed the fees paid to the WWP by the Licensee. Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, even if advised of the possibility of a claim.

9. Notices

All notices given pursuant to this Agreement shall be in writing and may be delivered by registered or certified mail, return receipt requested, or by overnight carrier, If any notice is sent by facsimile, confirmation copies must be sent as specified above. Either party may from time to time change its Notice Address by written notice to the other party.

10. Miscellaneous

10.1. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of the WWP and Licensee.

10.2. This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

10.3. Nothing contained herein shall be deemed to create an agency, joint venture, or partnership relationship between the parties.

10.4. Waiver of any provision herein shall not be deemed to be a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

10.5. If any provision or provisions of this Agreement shall be held invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

10.6. The parties agree that this agreement shall be construed in accordance with and governed by the laws of the State of Rhode Island and Providence Plantations and the parties consent to the jurisdiction and venue of the state and federal courts of the State of Rhode Island and Providence Plantations.

10.7. Neither party may assign or transfer, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

SCHEDULE A: PAYMENT TERMS

Access fee

The Access Fee shall be \$_____, and shall be due and payable as of July 1 of every calendar year during the initial or renewal terms of the Agreement. The Access Fee for the first year shall be prorated to reflect the number of months remaining in the calendar year following the Agreement Date, and shall be due and payable thirty (30) days after the Agreement Date. The Access Fee is subject to reasonable annual increases.

*** Access fee for the first year shall be prorated from the date the Agreement is signed.**

Payment terms

Any payments made more than thirty (30) days after they are due and payable shall be subject to a 10% annual charge.

All payments shall be made by check payable to Brown University.

SCHEDULE B: SUPPORT

User support for the WWP Textbase will be conducted largely through online help and documentation, which will accompany the Textbase. In addition, the WWP will offer the following support to assist Licensee and Authorized Users in use of the Textbase.

WWP support staff will serve as contact points for Licensee, and will be available by email, US mail, and telephone during regular business hours, Monday through Friday. The contact address for WWP support is as follows:

WWP Support
Box 1841, Brown University
Providence, RI 02912
401-863-2135
email: WWP_support@brown.edu

Support will include:

troubleshooting individual problems
regular system and project updates documented at the WWP web site
maintenance of an online listserv discussion group

In addition, the WWP support staff will be responsible for the maintenance of the help files and user documentation available online.

SCHEDULE C: HARDWARE AND SOFTWARE REQUIREMENTS

The following hardware and software is required or recommended in order to access the Textbase. These requirements and recommendations will change as computer hardware and software technology evolves.

Minimum requirements:

Internet connectivity
Web browsing software
Mac, PC, or Unix workstations with TCP/IP installed

Recommendations for optimal performance

Internet connectivity with at least megabits/second transfer capacity
Graphical web browser; Netscape 4.0 or above, or Internet Explorer 4.0 or above, preferred
Monitor with a resolution of at least 800x600
Minimum of 32 Mb of RAM memory
At least 12 Mb of free disk space for downloading and printing

SCHEDULE D: USER RULES

Licensee may reuse downloaded electronic files (HTML or SGML) or transcriptions from the Textbase for private scholarly or pedagogical purposes, such as personal research, or to include in a course web site.

Licensee may modify the downloaded files or transcriptions, but he/she shall not represent the modified files as original WWP files, and he/she shall provide appropriate acknowledgement of the WWP as the source. The WWP shall supply, in a public location at our web site or on request, suggested forms of acknowledgement.

Licensee may use downloaded files and WWP transcriptions in products intended for sale with the written permission of the WWP, and such permission shall not be unreasonably withheld. For academic projects such as scholarly editions the fee for such use will be nominal. For commercial reuse, we may charge a fee or royalty based on the anticipated distribution and price of the publication.

Licensee may include printed Materials in course packets which will be resold within the Licensee's institution, without separate permission from the WWP, during the term of this Agreement. Such printed Materials must include a reasonable identification of the WWP as source.

Licensee may download and redeliver electronic Materials in SGML or HTML from the Textbase as long as Licensee holds a valid, current license, and as long as he/she maintains internal access pages which provide reasonable identification of the WWP as source and owner of the Textbase, including a link to the WWP web site.

Neither Licensee nor Authorized Users may distribute or sell downloaded files or printouts.