

THE GALLUP ORGANIZATION

GALLUP BRAIN LICENSE and SUBSCRIPTION AGREEMENT

This License Agreement ("Agreement") is made and entered into as of *June 1, 2007* the "Effective Date") between Gallup, Inc. d/b/a The Gallup Organization ("Gallup"), a Delaware Corporation located at [REDACTED] and *University of California, San Diego* ("Licensee") located at [REDACTED]

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Licensed Products.

The Gallup Brain is a searchable, living record of more than 60 years of public opinion, which includes the answers to more than 125,000 questions and responses from more than 3.5 million people interviewed by The Gallup Poll since 1935. The Gallup Brain also houses current Gallup Poll News Service articles that feature the latest in-depth poll analyses and replicas of news stories and press releases linked to the surveys. The Licensed Products ("The Gallup Brain") subject to this Agreement include: 1) the Gallup Brain Database made available on-line at <http://institution.gallup.com> from Gallup, 2) on-line help and/or printed documentation produced by Gallup consisting of directions related to the use of The Gallup Brain, and 3) customer service support via telephone or email.

2. Licensed Use of The Gallup Brain.

a. Licensee hereby accepts from Gallup a non-transferable license providing for computerized access to the Gallup Brain. Licensee acquires no ownership rights to the information, data and materials available on the Gallup Brain whatsoever, or any portions thereof, and all such rights remain with Gallup. Title, as well as all applicable copyrights, trademarks, trade secrets, or other intellectual proprietary rights of and to the materials in the Gallup Brain are, and remain the property of Gallup.

b. Licensee rights under this Agreement are limited to "Authorized Users" of the Gallup Brain in accordance with the definitions and terms provided below for Academic Institution, Special Library/Institution, Commercial Business, Public Library and Individual subscriptions. Licensee rights do not extend to "unauthorized users" including parent or subsidiary corporations, institutions, associations, or organizations affiliated with or related to the Licensee. Gallup reserves the right to determine or define an eligible site, operational entity,

library system or similar limitations with respect to any prospective Licensee, and to refuse to accept any registration order for any reason at Gallup's sole discretion.

Academic Institution subscriptions are limited by geographic site whereby each geographically distinct campus shall be treated as a separate site for purposes of the Gallup Brain service. Authorized users at academic institutions shall be defined as the following: (i) persons officially registered as full or part-time students of Licensee; (ii) full or part-time faculty and staff of Licensee, including adjunct and courtesy appointments and active volunteers; (iii) registered users of the Licensee's libraries (iv) walk-in public users physically present at Licensee's library facilities and (v) authorized and authenticated users on the institution's secure computer network. New categories of Authorized Users not listed above will be negotiated between Licensee and Gallup.

Special Library/Institution shall mean a single geographically distinct operational entity (e.g., laboratory, foundation, government research library, etc.). A separate license is required for each geographically distinct operational entity unless otherwise negotiated between the parties which shall be set forth in the attached registration form ("Attachment A"). Authorized Users shall be limited to current employees of that institution.

Commercial Business shall mean a single corporate location. A separate license is required for each geographically distinct operational entity unless otherwise negotiated between the parties which shall be set forth in the attached registration form ("Attachment A"). Authorized Users shall be limited to current employees of that business.

Public Library licenses (non-academic) are limited by geographic/service area and to a single main library and its branches (i.e., to the libraries under a single director/board of trustees). Authorized users shall be limited to library staff and patrons accessing the Gallup Brain while physically present in the library.

Individual licenses are for non-institutional, personal use only and are limited to the number of search sessions specified in the Registration form for a license period of 12 months. An Authorized user of this license included the End-User only.

Licensee is responsible for providing valid IP addresses for their organization. Only those IP addresses submitted by Licensee and listed on the attached Registration Form (Attachment A) shall have access to the Gallup Brain; any violation or unauthorized use is cause for immediate termination of this License Agreement. Licensee is responsible for providing reasonable security to ensure that only authorized users have access to the Gallup Brain.

c. The terms of this License apply to the use of the Gallup Brain services and products during both trial periods and/or paid subscription periods.

3. Use of the Gallup Brain.

Licensee and Authorized Users may make all use of the Gallup Brain as is consistent with the Fair Use Provisions of United States and international law. Nothing in this Agreement shall be interpreted to limit in any way whatsoever Licensee's or any Authorized User's rights under the Fair Use provisions of United States or international law to use the Gallup Brain including but not limited to the viewing, downloading, or printing of the Gallup Brain for the internal or personal use of the Licensee or Authorized Users. The Gallup Brain may be used for purposes of research, education or other non-commercial scholarly purposes.

4. Prohibited Use of Gallup Brain.

a. Licensee or an Authorized User shall not forward, transfer, sell, rent, or otherwise knowingly distribute or provide access to the Gallup Brain or any portion thereof, to any third party that is not an Authorized User as described herein. The Gallup Brain is not to be used for interlibrary loan, fee-for-service purposes such as document delivery and/or transmitted to non-subscribing institutions.

b. Licensee or Authorized Users shall not use the Gallup Brain as part of or as a basis of a database for commercial sale, access, distribution or timesharing arrangement.

c. Licensee shall not modify, alter, or create derivate works of the materials contained in the Gallup Brain without the prior written permission of Gallup.

d. Licensee or Authorized Users may not remove, obscure or modify any copyright or other notices included in the Gallup Brain.

5. Licensee Performance Obligations.

a. Licensee is required to make all reasonable efforts to notify its Authorized Users of the prohibited uses and to notify Gallup of any infringements of copyright or unauthorized use of which it becomes aware. Licensee will further cooperate with Gallup in investigating any such unauthorized uses and taking all reasonable steps to remedy such unauthorized use and prevent a reoccurrence.

b. Licensee is responsible for providing any and all equipment necessary to access the Gallup Brain and is responsible for ensuring that it is compatible with any access requirements for the Gallup Brain.

c. Licensee is responsible for providing valid IP addresses for their organization. Only those IP addresses listed on the attached Registration Form shall have access to the material; any violation or unauthorized use is cause for immediate termination of this License Agreement. Licensee shall notify Gallup immediately upon any change to Licensee's IP addresses.

d. Licensee and/or Authorized Users shall give appropriate credit to the source when citing any data from the Gallup Brain and shall comply with the US Copyright Act.

6. Gallup Performance Obligations.

a. Gallup will make available to Licensee and Authorized Users the Gallup Brain within two (2) weeks of the Effective Date of this Agreement.

b. Gallup will offer reasonable levels of continuing support to assist Licensee in use of the Gallup Brain. Gallup will make its personnel available by email or phone for problem-solving or general questions.

c. Gallup will use reasonable efforts to ensure that Gallup's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and Authorized Users with a quality of service comparable to industry standards. Gallup will use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% of up-time per month. The down-time shall include periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of the Products as they become available, and downtime related to the failure of equipment or services outside the control of Gallup, including but not limited to public or private telecommunications service or internet nodes or facilities. Scheduled downtime will be performed at a time to minimize inconvenience to Licensee and Authorized Users. Gallup will notify Licensee in a timely manner of all instances of system unavailability that occur outside of Gallup's normal maintenance window and use reasonable effort to provide advance notice of hardware or software changes that may affect system performance.

d. Licensee understands that from time to time the Gallup Brain will be added to, modified, or deleted from by Gallup and/or that portions of the Gallup Brain may be migrated to other formats. Further, Gallup shall notify Licensee as soon as possible when the URLs and server domain names that affect Licensee's access are modified.

e. In the event that Gallup requires Authorized Users to agree to terms relating to the use of the Gallup Brain before permitting Authorized Users to gain access to the Gallup Brain (commonly referred to as "click-through" licenses) such terms shall not materially differ from provisions of this Agreement. In the event of any conflict between such terms and this Agreement, the terms of this Agreement shall prevail.

7. Copyright and Proprietary Rights.

The entire contents of The Gallup Brain are copyrighted by Gallup under the Copyright Law of the US (Title 17, U.S. Code), which is a party to both the Universal Copyright Convention and the Berne Copyright Convention. This License grants no copyright or ownership interests to Licensee for any of the material and proprietary information referred herein belonging to Gallup.

8. Representations and Warranties.

a. Gallup has the right to enter into this Agreement and to license the use of the Gallup Brain to Licensee and Authorized Users.

b. Gallup represents and warrants that it has all rights in the Gallup Brain necessary to license the access to its contents to Licensee and that the usage of the contents in accordance with the terms and conditions of this Agreement shall not violate or infringe any copyright, patent trademark or other proprietary rights of any third party. Gallup agrees to defend, indemnify and hold harmless Licensee and Authorized Users from and against claims, suits, actions, losses, damages and costs arising out of the use of the Gallup Brain in accordance with the terms of this Agreement.

9. Limitations on Warranties.

a. Gallup shall not 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, arising out of the use of or the inability to use the Gallup Brain.

b. Gallup makes no representations or warranty, and expressly disclaims liability with respect to the content of the Gallup Brain, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.

c. Except for the express warranties stated herein, the Gallup Brain is provided on an "as is" basis, and Gallup disclaims any and all other warranties, conditions or representations (express, implied, oral or written), relating to the Gallup Brain or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. Gallup 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. Gallup further expressly disclaims any warranty or representation to Authorized Users, or to any third party.

10. Term and Termination.

a. This Agreement shall continue in effect for the period defined in section 11 of this agreement. Thereafter, both parties will review the current Agreement. In order to renew, Client, at the end of the current term, must complete a Subscription Agreement Addendum issued by The Gallup Organization. The Gallup Organization will contact Client no more than 60 days prior to the expiration of the current term with information regarding renewals.

b. In the event that either party breaches a term of this Agreement, the other may send written notice of the breach, including a reasonable cure period of not less than seven (7) business days. If the breach is not cured within that time, or if the parties do not reach a satisfactory agreement on extending the cure period, then the non-breaching party may terminate this Agreement effective immediately upon written notice.

c. Gallup reserves the right to suspend or refuse to provide the Gallup Brain services to Licensee for any reason whatsoever, with or without cause, and without prior notice, on conditions generally applicable to Licensees. If termination by Gallup for reasons other than material breach by Licensee, Gallup shall promptly refund to Licensee, on a pro-rated basis, license fees previously paid by Licensee with respect to the unexpired portion of the license term.

11. Fees.

Licensee shall make payment of [REDACTED] a 1-year license commencing on June 1, 2007 and expiring on May 31, 2008 to Gallup for use of the Gallup Brain. Additional information are set forth in the Subscriber Information form attached hereto.

12. Governing Law.

This Agreement shall be governed by the laws of the United States jurisdiction in which the Licensee resides. If Licensee is outside the territorial limits of the United States, then the laws of the State of New York, USA shall apply.

13. General Provisions.

a. All Notices, consents or other communications referred to herein shall be in writing to the other party by first class mail or facsimile.

b. This Agreement, and the license granted herein, may not be transferred or assigned by Licensee to any third party. Any transfer or assignment of this Agreement shall be null and void and of no force or effect.

c. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Gallup and Licensee.

d. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

e. If any provision or provisions of this Agreement shall be held invalid, illegal, and 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.

f. Licensee's use of the Gallup name or the Gallup Brain by Licensee or any Authorized User (alone or as part of another name) in advertising or promotional materials shall be permitted only upon the prior written approval of, and in accordance with the restrictions agreed to by Gallup.

g. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

GALLUP 

BY: 

DATE: 8/6/07

Print Name: 

Title: 

Address: 



UNIVERSITY OF CALIFORNIA, SAN DIEGO

BY: 

DATE: 5/8/07

Name: 

Title: 

Address: 

