NewsBank/Readex – Evans: Digital Edition License Agreement

1. Parties and Acceptance

This Agreement is between the institution named below, as licensee ("Customer") and NewsBank, inc., a Delaware corporation having its principal place of business at 5020 Tamiami Trail N, Ste 110, Naples, Florida 34103 ("NewsBank"), as licensor. This Agreement shall become effective the earlier of (a) when NewsBank receives a copy of this Agreement signed by Customer, or (b) when Customer accepts delivery of the NewsBank/Readex – Evans: Digital Edition product ("Product"). For purposes of this Agreement, delivery includes either shipment of physical goods or access by electronic means. This Agreement includes any attachment hereto, such as a rider, order confirmation, invoice, or quotation, specifying terms for a particular Customer.

2. Product

The Product subject to this Agreement consists of (1) the Evans: Digital Edition database(s) and (2) software provided by NewsBank to Customer to search for and retrieve data from the database(s). NewsBank may provide the Product in any medium, as agreed to by Customer, including remote online access through a proprietary network or the Internet.

3. License

a. NewsBank grants to Customer and to Customer's Authorized Users, defined herein as limited to staff, faculty, and students/patrons of the Customer's institution or organization as well as other users of the Customer's on-site computer facilities, on the terms set forth in this Agreement and any attachment hereto, a non-exclusive, nonassignable, concurrent-use license to use the Product at the licensed site(s) identified in the attachment hereto (the "Licensed Site"). Customer understands and acknowledges that its use is subject, after reasonable notice, to restrictions and disclaimers that NewsBank or its suppliers publish, from time to time.

b. The licensed use of the Product consists of access, search, retrieval, viewing, printing, and downloading. Printing and downloading are limited to insubstantial portions of the data, for temporary storage.

c. Customer will take reasonable steps to ensure that only Customer's Authorized Users use the Product, and that Customer's Authorized Users do so in accordance with this Agreement.

d. Customer may include copies (hardcover or downloaded) of items from the online form of Publications (i) in anthologies (Coursepacks) in print or digital form for sale, only by a University of California Book Store, and/or distribution to the Authorized Users for their use in connection with classroom instruction and/or (ii) in reserves (print or digital) set up by Customer's libraries for access by Authorized Users in connection with specific courses offered by Customer. Copies of items in digital format, which are included in online Coursepacks or reserves, will be deleted by Customer after the end of the term in which the related course concludes. The sale of Coursepacks by any third party is prohibited.

e. Interlibrary Loan (ILL): Customer may use the Product to create hardcopy for the purpose of supplying interlibrary loan requests in accordance with the Interlibrary Loan Provision of Section 108 of the U.S. Copyright Law and the

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CONTU Guidelines. Customer warrants that the number of hardcopy articles (whether copies of the same article or of different articles) supplied to any library pursuant to the foregoing provision will not exceed 5 in any calendar year; any breach of the forgoing warranty shall be deemed a material breach.

4. Express Restrictions

a. On-Site Use: Customer may make the Product available for authorized use at the Licensed Site over a computer network to the number of concurrent users listed in the attachment hereto.

b. Remote Use: Customer, if granted a remote-use license, defined in the attachment hereto, may make the Product available to Customer's Authorized Users who are not at the Licensed Site. NewsBank grants to such Customers the non-exclusive right to provide to the licensed number of concurrent users non-commercial access to the Product under the following conditions:

   i. Users must access the Product only through the server or network located at the Licensed Site and Customer's server or network must have adequate security to allow access only by Authorized Users.

   OR

   ii. Users must access the Product only through user authentication programs supplied to Customer by NewsBank.

5. Intellectual Property

a. Customer acknowledges that the Product consists of materials copyrighted by third parties and containing trademarks owned by third parties, and that NewsBank owns the copyright of the compilations of these materials. Customer acknowledges that its use of the Product, including use by Customer's Authorized Users, must not infringe the rights of any third parties.

b. In accordance with the fair-use provisions of the Copyright Act of the United States, Customer and Customer's Authorized Users will reproduce or store, and allow to reproduce or store, only insubstantial portions of the Product, resulting from specific searches for Customer and Customer's Authorized Users' internal use. Customer and Customer's Authorized Users will not store or use, or allow to store or use, any portion of the Product in a searchable database without written permission of NewsBank as agent for the underlying copyright-holders.

6. Warranty, Liability, Indemnity

a. NewsBank does not warrant that use of the Product will be uninterrupted or error-free.

b. As a provider of data supplied by others, NewsBank does not warrant the accuracy or completeness of the Product, or results obtained by using them. NewsBank disclaims liability for any offensive, defamatory, or infringing materials in the Product.

c. Customer will take reasonable steps to ensure that Customer's Authorized Users will use the Product according to the terms of this Agreement, and that they will not bypass, or attempt to defeat, NewsBank's or Customer's security measures preventing unauthorized use of the Product.

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d. To the extent allowed by law, The Customer agrees to indemnify, defend and hold NewsBank harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising from any violation by the Customer of subparagraph 6.c.

e. NEWSBANK DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

f. Neither NewsBank nor its suppliers will be liable for consequential or punitive damages, even if notified of their possibility. This limitation may not apply in some states.

g. NewsBank warrants, to the best of its knowledge, that it has the authority to enter into this agreement and to grant the licenses made under this Agreement.

h. NewsBank will indemnify Customer against all claims, liability, and expenses, including reasonable attorney's fees, as incurred, arising out of any third party claim for infringement or violation of that third party's intellectual property or proprietary rights in the product or software associated with the product, but only to the extent such items remain unaltered and as-provided to the Customer by NewsBank and further provided that Customer's use of the Product has not exceeded the scope of the license granted hereunder. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION.

i. Each party shall give the other prompt notice of any indemnification claim under this Section 6. The indemnifying party shall have the right to control the defense of the claim. The indemnified party may participate in the defense, at its own expense, after the indemnifying party assumes the control thereof.

7. Term, Termination and Perpetual License

a. This Agreement will be in effect during the Product subscription period and subsequent Product subscription renewal periods. Customer may not sell or otherwise transfer ownership of the physical media. In the event that either party believes that the other materially has breached any obligations under this Agreement, or if NewsBank believes that Customer has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice.

b. Except for termination for cause, NewsBank hereby grants to Customer a nonexclusive, royalty-free, perpetual license to the Product, provided that the parties shall have agreed on fees for such use and such fees have been paid. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement.

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8. Disputes

a. This document, including any attachment, is the entire Agreement between Customer and NewsBank. It may be modified only in writing, signed by both parties. A party's failure to exercise a right under this Agreement will not waive its other rights. Any provision found to be unenforceable will be construed for maximum effect, and will not impair the other provisions.

b. Disputes will be subject to California law (without giving effect to its choice-of-law provisions). The parties mutually agree that all disputes between them will be decided exclusively in the home state of the party against whom that suit and/or proceeding is instituted. Customer will accept service of process of any complaint by certified United States postal mail or its domestic or foreign equivalent.

9. Other Provisions

- Text Conversion Partnership (TCP) Cooperation: To ensure that the Product is part of a set of well-integrated resources covering this historical time period, NewsBank agrees to cooperate with the TCP project.
- Future Updates: The purchase price includes all instances of changes or updates to the content provided for the years licensed.
- Cancellation of Other Formats: There is no restriction on canceling subscriptions for print or other formats for the titles represented in the Product.
- Stable URL: NewsBank will provide the Customer the stable URLs for the Product that generates either:
  (a) The Customers NewsBank-Readex Product Homepage or
  (b) A direct link to the Product Homepage
- Linking: The California Digital Library (CDL) will provide links to the Product from its OPAC and also from the Product citations to University of California holding statements. NewsBank will take reasonable steps to investigate the commercial practicality of implementing linking via Open URL/SFX.
- SearchLight: SearchLight is California Digitals Library's database tool that helps users select appropriate databases by permitting a single-query broadcast search over many databases. NewsBank will take reasonable steps to investigate the commercial practicality of providing a separate SearchLight access path and search page for the Product. More detailed information about SearchLight is available at:
  http:www.cdlib.org/about/publisher_info_pub/CDL_DB_Vendor_Req_60401.rtf
- Usage Statistics: NewsBank will provide usage statistics to the University of California at the Campus/Lab level on a monthly basis for the Product. NewsBank will provide statistics in compliance with ICOLC standards. (More details are available at http://www.library.yale.edu/consortia/2001webstats.htm) Note: The detail level of reporting is subject to the type of authentication method used per Campus/Lab.
- Authentication: While the initial means of authentication will be via IP address, as the University of California begins to move to certificate authentication, NewsBank will take reasonable steps to investigate the commercial practicality of implementing additional or alternative authentication measures.
- Legal Authority: Customer signs the Agreement on behalf of the ten (10) University of California Campuses and the University of California, Office of the President, as set forth in Exhibit A (hereafter referred to as "Campuses" or "Campus"). The Campuses are entitled to rights, responsibilities, and privileges

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as set forth for the Customer under this Agreement. The Customer warrants and represents that it has the agreement of all Campuses to enter into this Agreement, and each Campus accepts and agrees to the terms and conditions of this Agreement, as if it has itself executed same.

- Performance Guarantee: NewsBank shall use commercially reasonable efforts to provide continuous service to the Product seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional licensed materials as they become available, and downtime related to the failure of equipment or services within the control of NewsBank. Scheduled down-time will be performed at a time to minimize inconvenience to the Customer and its Authorized Users. If NewsBank fails to provide access to the Product in conformance with the terms of this provision, Customer shall immediately notify NewsBank, and NewsBank shall promptly use commercially reasonable efforts to restore access to the Product as soon as possible. In the event that NewsBank fails to repair the nonconformity within a reasonable amount of time, Customer is granted the right to terminate the agreement with 30 days notice. If such termination occurs, NewsBank will provide Customer with a prorated refund for the amount of time remaining on the contract. The prorated refund amount will be calculated by determining a daily rate for the current yearly maintenance fee.

NewsBank, inc.	NewsBank Customer
	Institution: Regents of the University of California
	Authorized By:
Authorized By:	Name:
Name:	Title: Deputy Univ. Librarian CDL
Title: Sales & Marketing Project Manager	Signature:
Signature:	Date: May 2, 2003
Date: 5/7/03	

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Exhibit A

Campuses of the University of California

University of California, Berkeley

University of California, Davis

University of California, Irvine

University of California, Los Angeles

University of California, Merced

University of California, Riverside

University of California, San Diego

University of California, San Francisco

University of California, Santa Barbara

University of California, Santa Cruz

University of California, Office of the President

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Appendix I
Business Terms

1. **Purchase Price**

California Digital Library agrees to pay the fees set forth in exchange for the products and services detailed in this license:

a) **License fee** for the Evans Digital Archive content -

b) **Annual Online Access fee** for the Evans Digital Archive content - (5-year access fee prepayment)

Note: The Annual Evans Digital Online Access fee is per year based on a 5-year prepayment (Normally, per year).

c) **Cap on Annual Access Fee:** There is a annual cap on the Annual Access Fee for a similar 5-year prepayment purchase.

d) **MARC Records:** Fee for 36,000 MARC Records for loading centrally or locally in online campus catalogs -

Note: The initial 36,000 MARC records will be provided when available (Expected on or before 12/31/03). For the Product content that is not yet available online, NewsBank will make MARC records available free of charge upon the final completion of the Product as they become available.

2. **Other Terms**

a) **Concurrent User Policy:** Unlimited Users

b) **Subscription Period:** January 1 to December 31 of each year.

c) **Invoicing:** NewsBank, inc. shall send the invoice (Totaling) for the above referenced content to:

Deputy University Librarian
University of California Office of the President
California Digital Library
415 20th Street
Oakland, CA 94612-2909