



## **NewsBank/Readex License Agreement Readex Digital Collections**

### **1. Parties, Acceptance, Master Terms for all Products**

This License Agreement ("Agreement") is between the institution named below, as licensee ("Customer") and NewsBank, inc., a Delaware corporation having its principal place of business at 5801 Pelican Bay Boulevard, Suite 600, Naples, Florida 34108 ("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 any Readex Digital Collection product (the "Effective Date"). For purposes of this Agreement, delivery includes either shipment of physical goods or access by electronic means.

The terms of this Agreement shall apply to all Readex Digital Collection database products subscribed to by Customer from time to time (the "Product" or "Products"). For each Product subscribed to by Customer, there will be a corresponding NewsBank order confirmation, invoice, quotation, purchase agreement or other similar document (a "Subscription Form") setting forth certain additional terms specific to that Product (identification of Product, price, payment terms, whether remote use is authorized, number of concurrent users or number of downloads allowed, subscription period, etc.), but the terms of this Agreement shall continue to apply. In the event of conflict between the terms of any Subscription Form and the terms of this Agreement, this Agreement shall govern. The terms of any document issued by Customer inconsistent with the terms of this Agreement are rejected, unless expressly agreed to by NewsBank in writing.

### **2. Products**

The Products subject to this Agreement consists of (1) the Readex Digital Collection database(s) subscribed to by Customer from time to time including any trial access and (2) software provided by NewsBank to Customer to search for and retrieve data from the database(s). NewsBank may provide the Products via the Internet or remote online access through a proprietary network and/or such other media as may be available and responsibly acceptable to Customer and NewsBank.

### **3. License**

- a. NewsBank grants to Customer and to Customers' Authorized Users, defined herein as limited to staff, faculty, and patrons/students of the Customer's institution or organization as well as other users of the Customer's on-site computer facilities (walk-in users), on the terms set forth in this Agreement and any Subscription Form(s), a non-exclusive, non-assignable, concurrent-use license to use each Product at the licensed site(s) identified in the Subscription Form applicable to such Product (the "Licensed Site") solely for non-commercial academic, educational and research purposes. Customer understands and acknowledges that all use is subject, after reasonable notice, to restrictions and disclaimers that NewsBank or its suppliers publish, from time to time.
- b. Customer and Customers' Authorized Users are licensed to use the Products solely for access, search, retrieval, viewing, printing, and downloading for non-commercial academic, educational and research purposes. Printing and downloading are limited to insubstantial portions of the data, for temporary storage. All other use is prohibited. The removal or altering of any copyright or other notices within the Product or using any portion of Product for purposes of manual, automated or other machine-assisted indexing



or classification of other publications is prohibited. The transmission of Content, as defined under Section 5a, (including, but not limited to, by way of e-mail, facsimile or other electronic means) is prohibited unless such transmission is between Authorized Users. Except as expressly provided for in this Agreement, you may not modify, publish, transmit (including, but not limited to, by way of e-mail, facsimile or other electronic means), display, participate in the transfer or sale of, create derivative works based on, or in any other way exploit any of the Content, in whole or in part without the prior written consent of NewsBank and (if applicable) its respective content providers.

- c. Customer will take reasonable steps to ensure that only Customer's Authorized Users use the Products, and that Customer's Authorized Users do so in accordance with this Agreement.
- d. Portions of this Agreement relevant to Authorized Users may appear in the form of "Terms and Conditions of Use" on or in the Products.
- e. Electronic Reserves/Course Packs: Customer may include copies (hardcover or electronic download) of items/articles from the Product (i) in course packs (print or digital form) for sale, on a cost-recovery basis only by Customer, and/or distribution to Authorized Users for their use in connection with classroom instruction and/or (ii) in reserves (print or digital form), including in course management systems (e.g. Blackboard, Desire to Learn, Angel, etc.), set up by Customer's libraries or faculty members for access by Authorized Users in connection with specific courses offered by Customer. Copies of items/articles are limited to insubstantial portions of the data, for temporary storage. Customer shall ensure that all copies are deleted or destroyed, the sooner of, the end of the term in which the related course concludes or upon termination of this Agreement. The sale of course packs by any third party is prohibited.
- f. Interlibrary Loan (ILL): Customer may use the Product to create hardcopy or electronic copies of items/articles (via Ariel® Document Transmission System or other means) 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 CONTU Guidelines, provided that such interlibrary loan requests do not hinder NewsBank's ability to sell the Product to other customers. Customer will take reasonable steps to ensure that the number of items/articles (whether copies of the same items/articles or of different items/articles) supplied to any library pursuant to the foregoing provision will not exceed 5 in any calendar year. In no event may the Customer's Interlibrary Loan program be used to avoid the need for another school, library, or other potential similar customer from subscribing to a Product. If NewsBank reasonably determines that Interlibrary Loan activities hereunder may be impairing NewsBank's ability to make sales of the Product or other NewsBank products to other customers, NewsBank may require such Interlibrary Loan activity to be modified or terminated, either entirely or with respect to the library whose activity is impairing NewsBank's business.
- g. Scholarly Sharing: Customer and Customer's Authorized Users may provide to a third party colleague minimal, insubstantial portions of the data retrieved from the Products for personal use or scholarly, educational or scientific research use in hard copy or electronically for temporary storage, provided that in no case any such sharing is done in a manner or magnitude as to act as a replacement for the recipient's or recipient institution's own subscription to either the Products or the purchase of other NewsBank products. If NewsBank reasonably determines that such sharing activities hereunder may be impairing NewsBank's ability to make sales of the Product or other NewsBank products to other customers, NewsBank may require such sharing activity to be modified



or terminated, either entirely or with respect to the Customer's Authorized User(s) whose activity is impairing NewsBank's business.

#### **4. Express Restrictions**

- a. On-Site Use: Customer may make each Product available for authorized use at the Licensed Site over a computer network to the number of concurrent users or number of downloads listed in the Subscription Form for the relevant Product.
- b. Remote Use: Customer, if granted a remote-use license, defined in the Subscription Form for the relevant Product, may make such Products available to Customer's Authorized Users who are not at the Licensed Site; provided that such availability is limited to non-commercial academic, educational and research use by the number of concurrent users or number of downloads set forth in the Subscription Form(s) for the relevant Product(s), and is further subject to the following conditions:

- i. Authorized Users must access the Products only through the server or network located at the Licensed Site and Customer's server or network must have adequate security to allow access to the remote access account setup by NewsBank only by Authorized Users.

**OR**

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

In no event may Remote Access be used to avoid the need for another school, library, or other potential similar customer from subscribing to a Product. If NewsBank reasonably determines that Remote Access activities hereunder may be impairing NewsBank's ability to make sales of the Product or other NewsBank products to other customers, NewsBank may require such Remote Access activity to be modified or terminated, either entirely or with respect to the Customer's Authorized User(s) whose activity is impairing NewsBank's business.

- c. Without limiting any other restriction on use set forth in this Agreement, the following limitations apply to make sure that all use is for non-commercial academic, educational and research purposes and will not impair NewsBank's ability to market its products to additional customers:
  - i. In the event Customer is a non-school library, any permitted remote access is limited to use by individuals through personal computers at home for their own convenience and specifically excludes patrons who access the Products through a school, school library, corporation, business or other organization. Customer is specifically prohibited from granting any remote access to any school, school library, corporation, business or other organization.

#### **5. Intellectual Property**

- a. Customer acknowledges that the Products consist 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. The Product contains copyrighted material, trademarks and other proprietary information owned by NewsBank and its content providers, including without limitation, compilations, text, software, photographs, video, graphics, trademarks, service marks, logos, designs, and music and sound (the "Content"), and such Content is protected under U.S. copyright laws, U.S. trademark laws, and other intellectual property laws as well as international copyright and

trademark laws and treaties. Customer acknowledges that its use of the Products, including use by Customer's Authorized Users, must not infringe the rights of NewsBank or of any third parties.

- b. Consistent with the fair-use provisions of the Copyright Act of the United States, Customer and Customer's Authorized Users are licensed to reproduce or store only insubstantial portions of the Products, resulting from specific searches for Customer's and/or Authorized Users' own non-commercial academic, educational and research purposes. Customer and Customer's Authorized Users will not store or use, or allow to be stored or used, any portion of the Products in a searchable database without written permission of NewsBank and (if applicable) its respective content providers. Nothing contained herein shall be construed as granting the Customer and its Authorized Users or any third party any interest in or to the Product or Content. All rights in and to the Product and Content are expressly reserved by NewsBank and/or NewsBank's respective content providers.

## **6. Warranty, Liability, Indemnity**

- a. NewsBank and its respective content providers do not warrant that use of the Products will be uninterrupted or error-free.
- b. NewsBank and its content providers do not warrant the accuracy or completeness of the Products, or results obtained by using them. NewsBank disclaims liability for any offensive, defamatory, or infringing materials in the Products.
- c. Customer will take reasonable steps to ensure that Customer's Authorized Users will use the Products 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 Products.
- d. To the extent allowed by law, the Customer agrees to indemnify, defend and hold NewsBank harmless from and against any claims, losses, damages, costs, liability and expenses (including reasonable legal and professional fees), arising in whole or in part from any violation by the Customer of subparagraph 6.c.
- e. NEWSBANK AND ITS CONTENT PROVIDERS DISCLAIM ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- f. To the extent allowed by law, neither NewsBank nor its content providers will be liable for consequential or punitive damages, even if notified of their possibility.
- 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 through counsel of its own selection along with the right to settle the claim at its own discretion. The indemnified party shall cooperate in such defense and settlement and 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 as of the Effective Date and continue to be in effect for each Product trial and/or subscription period mutually agreed to by the parties for that Product. Customer may not sell or otherwise transfer ownership of any physical media in which any Product may be delivered. 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. The means by which Customer and its Authorized Users shall have access to the Product shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

If for any reason, NewsBank or any successor to NewsBank ceases to provide permanent online access, NewsBank or such successor to NewsBank shall provide Customer or its designee, at cost, with an archival copy of the Product data (images & ASCII database) as of the date of discontinuance of online service, in a mutually agreeable electronic format (Customer to provide its own search engine).

- c. NewsBank will allow the Customer to purchase a magnetic tape load of the Product data (images & ASCII database) provided under this Agreement at anytime during the subscription period or within 60 days of cancellation or non-renewal, which the Customer can either archive or load onto a local server to be accessed by the Customer's own search and retrieval software. Customer and Customer's Authorized Users may use the archive as provided in Section 3. In no event shall Customer make the archival copy available to any third party.

## **8. Disputes**

- a. This document, including any Subscription Form(s), is the entire Agreement between the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written. With the exception of changes made to the Subscription Form(s), this Agreement 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. Each third party content provider of Content has the right to assert and enforce these provisions directly on its own behalf as a third party beneficiary.

- 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

- a. Stable URL: NewsBank will provide the Customer the stable URLs for the Product that generates either:
1. The Customers NewsBank-Readex Product Homepage, or
  2. A direct link to the Product Homepage
- b. Electronic Links: Customer may provide electronic links to the Product or OpenURL links to specific articles within the Product from Customer's OPAC and web page(s), in accordance with the terms of this Agreement, and is encouraged to do so in ways that will increase the usefulness of the Product to Authorized Users. NewsBank staff will take commercially reasonable efforts to assist Customer upon request in creating such links effectively. Customer shall make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by NewsBank
- c. Usage Statistics: NewsBank will provide usage statistics to the Customer 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.
- d. Legal Authority: The Customer signs this Agreement on behalf of the participating institutions, as set forth in the Subscription Form (hereafter referred to herein as the "Participating Institution" or "Participating Institutions"). Eligible Participating Institutions are as follows:
1. University of California, Berkeley
  2. University of California, Davis
  3. University of California, Irvine
  4. University of California, Los Angeles
  5. University of California, Merced
  6. University of California, Riverside
  7. University of California, San Diego
  8. University of California, Santa Barbara
  9. University of California, Santa Cruz
  10. University of California, Office of the President
  11. University of California, San Francisco
  12. Lawrence Berkeley National Laboratory, Berkeley

The Participating Institutions are entitled to rights, responsibilities and privileges as set forth for the Customer under this Agreement. The Customer warrants and represents that it has the agreement of all Participating Institutions to enter into this Agreement, and each Participating Institution accepts and agrees to the terms and conditions of this Agreement, as if it has itself executed the same.

This Agreement shall also govern any individual Product purchases made by the Participating Institutions, and not just central purchases through the Customer, unless otherwise governed by a separate agreement entered into between NewsBank and the Participating Institution for such individual Product purchase(s).

- e. 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.
- f. Use of Digital Watermarking Technology: If NewsBank utilizes any type of digital watermarking technology for any element of the Product, NewsBank agrees that watermarks will not degrade image quality. These watermarks shall not contain user-related information such as account number or IP address. NewsBank agrees to notify Customer in advance if digital watermarking technology is used in the future with the Product.
- g. American Disabilities Act (ADA): NewsBank shall make commercially reasonable efforts to comply with the Americans with Disabilities Act (ADA) requirements, Section 508 of the Rehabilitation Act Amendments, and provide Customer current completed Voluntary Product Accessibility Template (VPAT) upon request. Notwithstanding the foregoing, in no event shall the Contractor be required to provide any compliance remedy that is beyond what is required for any of its other customers.

NewsBank, inc.	NewsBank Customer
	Institution: <u>Regents of the University of California</u>
Authorized by: [REDACTED]	Authorized by: [REDACTED]
NewsBank Employee:	Name: [REDACTED]
Employee Title: [REDACTED]	Title: [REDACTED]
Employee Signature: [REDACTED]	Signature: [REDACTED]
Date: [REDACTED]	Date: [REDACTED]

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