

This is an application to use the "Kikuzo II Visual for Library" News Database Retrieval Service.

I have read and accepted the Rules for Use of "Kikuzo II Visual for Library" News Database Retrieval Service and Terms of Use attached hereto, and hereby apply to use the "Kikuzo II Visual for Library"--- an internet-based news database retrieval service provided by The Asahi Shimbun Company---orders for which service are handled by Kinokuniya Company Ltd. An administrator, who shall oversee the use of the "Kikuzo II Visual for Library" News Database Retrieval Service, is specified in Schedule A hereto.

Signed for UCLA Library

Print Name **TEXT DELETED**

Title Associate University Librarian

Signature **TEXT DELETED**

Date _____

Signed for The Asahi Shimbun Company

Print Name **TEXT DELETED**

Title Sales Section Manager Digital Media Division

Signature **TEXT DELETED**

Date 03 / 01 / 2009

Rules for Use of "Kikuzo II Visual for Library "

News Database Retrieval Service

The "Kikuzo II Visual for Library" is an internet-based news database retrieval service (the "Service"), provided by The Asahi Shimbun Company (the "Licensor") The terms and conditions of this agreement and all annexes and schedules attached hereto (collectively, the "Agreement") shall apply to, and the use of the Service shall only be permitted to the subscribers who accept the terms and conditions of the Agreement (the "Licensee").

Article I. Title to Pertinent Rights

The parties hereto (the "Parties") acknowledge that all right, title and interest, including without limitation, all copyrights and intellectual property rights to the Service and to the database comprising the Service vest with Licensor, and that copyright and other rights to news, photographs, and other data contained therein (the "Data") vest with Licensor and/or other rightholders of the Data, and that Licensee acquires no proprietary interest in the Service, the database comprising the Service or the Data. Such rights shall at all times be possessed by the Licensor and/or other rightholders mentioned in this Article, and their successors. Licensee may not use the Service, the database comprising the Service or the Data in any fashion that infringes the copyrights or proprietary interests therein, and may not remove or obscure any copyright notice or other notices contained in the Service, the database comprising the Service or the Data.

Article II. Grant of License

Licensor grants a non-exclusive, non-transferable, limited license to access and use the Service to Licensee. Licensee, shall be permitted to provide access to and use of the Service to Authorized Users of the Licensee, including faculty, students, and researchers , and to persons not affiliated with Licensee but who are physically present at Licensee's facilities (the "Users").

Article III. Outsourcing of Certain Activities

Licensor entrusts Kinokuniya Company Ltd (together with any of its affiliate's and subsidiaries, the "Distributor") all or part of activities related to the Service, including without limitation, the processing of applications and the collection of Service Charges (defined below). Licensee hereby acknowledges that the Distributor will undertake those activities of the Licensor referred to above under the Agreement, and agree that it shall make all payments, notifications of changes in respect of the information provided in Schedule A or the termination of the Service, and inquiries by Licensee to Licensor through the Distributor.

Article IV. The Terms of Use

1. Schedule A, to the Agreement, shall provide the following: the date on which the Service begins; and designated Global IP addresses.
2. Licensee shall access and use the Service through a closed network managed and operated by Licensee, (the "Certified Network"). Users shall only have access to the Service through the Certified Network controlled by the Licensee. Licensee shall use reasonable efforts to ensure that Licensee exclusively controls the access to and the use of the Service by the Users. Access to the Service from the Certified Network shall be authorized by Licensor after confirmation that such access is from the designated Global IP address stipulated in Schedule A. For the avoidance of doubt, access to the Services through the Certified Network, includes without limitation the logging onto the Certified Network by the Users by means of remote access.

Article V. Prohibition of Unauthorized Use

Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

Modification of Licensed Materials. Licensee shall not modify, manipulate, or create a derivative work of the Licensed Materials without the prior written permission of Licensor.

Removal of Copyright Notice. Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials.

Commercial Purposes. Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of the Licensed Materials, fee-for-service use of the Licensed Materials, or bulk reproduction or distribution of the Licensed Materials in any form; nor may Licensee impose special charges on Authorized Users for use of the Licensed Materials beyond reasonable printing or administrative costs."

Article VI. Fees

1. Licensee shall make payment to Licensor for use of the Service (the "Service Charge") pursuant to the terms set out in Schedule A. Licensor shall charge Licensee, and Licensee shall incur and pay to Licensor, a full monthly payment even when Licensee terminates use of the Service before the end of a given month.

2. Licensor may revise the Service Charge after providing at least two months' written notice to Licensee. If such revision is not acceptable to Licensee, Licensee may terminate all or part of the Agreement in accordance with Article XV hereof.

Article VII. Licensee Performance Obligations

Provision of Notice of License Terms to Authorized Users. Licensee will include a notice linked from its e-resources portal that users of licensed electronic resources generally may not:

- permit anyone other than authorized users to use the licensed materials
- modify or create a derivative work of the licensed materials without the permission of the licensor
- remove, obscure or modify any copyright or other notices included in the licensed materials
- use the licensed materials for commercial purposes, including but not limited to the sale of the

licensed materials

Users are individually responsible for compliance with these terms.

Protection from Unauthorized Use. Licensee shall implement reasonable procedures to restrict access to the Licensed Materials to Users.

Article VIII. Amendments to Schedule A

Should Licensee wish to change Administrator and/or Contact Person(s) stipulated in Schedule A,

Licensee shall promptly produce a written notice to this effect and shall submit it to the Distributor.

Should Licensee wish any change in the Global IP addresses stipulated in Schedule A, Licensee shall notify Licensor through Distributor.

Article IX. Revising the Terms of Use

Licensor may revise the Terms of Use as it wishes after providing at least two months' written notice to Licensee.

Article X. Liability of the Parties

1. Protection from Unauthorized Use. Licensee shall use reasonable efforts to protect the Licensed Materials from any use that is not permitted under this Agreement. In the event of any unauthorized use of the Licensed Materials by an Authorized User, (a) Licensor may terminate such Authorized User's access to the Licensed Materials, (b) Licensor may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (c) Licensee shall terminate such Authorized User's access to the Licensed Materials upon Licensor's request. Licensor shall take none of the steps described in this paragraph without first providing a sixty (60) day notice to Licensee and cooperation with the Licensee to avoid recurrence of any unauthorized use.

Notice of Terms of "Click-Through" License Terms. In the event that Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall the terms of such "click-through" licenses materially differ from the provisions of this Agreement. In the event of any conflict between the terms of such "click-through" licenses and this Agreement, the terms of this Agreement shall prevail.

Article XI. Response to Inquiries

Should Licensee receive inquiries concerning the Service from Users, it may direct such inquiries to Licenser through the Distributor. The Licensee hereby agrees that any and all such inquiries may be answered directly from the Licenser or through the Distributor.

Article XII. Confidentiality of User Information

Licenser agrees to maintain the confidentiality of proprietary information of Licensee and Users which it has obtained through the operation of the Agreement.

Article XIII. Limitations on Liability

1. Licenser and the Distributor make no representation or warranty, direct or implied, and expressly disclaim any liability with respect to any part of the content or functionality of the Service, including without limitation, the completeness, accuracy, validity, and fitness for a particular purpose. Licensee acknowledges that the Data contained in the Service constitutes archives of information, in general, as they were originally published in Licenser's past publications such as newspapers and magazines, and that they are not re-edited for the purpose of the Service..

2. Quality of Service. Licenser shall use reasonable efforts to ensure that the Licenser's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Licensee's locale.

Licenser shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per year. 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 outside the control of Licenser, including but not limited to public or private

telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount that the nonconformity is proportional to the total Fees owed by Licensee under this Agreement.

The Service may be partially delayed or suspended for any reason, including without limitation:

- (i) *A force majeure*, meaning any cause beyond the reasonable control of the Party whose performance is affected, including without limitation, electrical power outage, natural disaster, war, insurrection, and Government restriction;
- (ii) Failure of third-parties' telecommunications equipment;
- (iv) Any form of unauthorized, and / or overflow of, access to Licensor's internet servers providing the Service; and

4. Licensor's and the Distributor's liability for damages hereunder shall be limited to monetary damages not exceeding twelve(12) months' Service Charges, whether or not such liability is based on default, statutory warrants for defects, unjust enrichment, tort, or otherwise.

Article XIV. Term

1. Unless otherwise expressly agreed between the Parties, (a) the Agreement shall continue as specified in Schedule A hereof, and (b) the Agreement shall be automatically renewed at the end of the current term, unless either Party gives no less than one (1) month's written notice of its intention not to renew the Agreement before the expiration of the current term.

2. The Agreement shall apply to any and all obligations arising under the Agreement of the Parties, until such obligations are fully performed by the Parties.

Article XV. Early Termination

Either may terminate the Agreement for any reason by providing at least one (1) month's written notice to the other Party through the Distributor prior to its proposed date of termination.

Article XVI. Termination

Any Party hereto may terminate the Agreement immediately and without notice should any of the events described below occur, in which case the provisions of this Article shall not preclude the terminating Party from seeking damages from the other Party hereto.

(iii) A Party hereto assigns or passes a resolution to assign all or a major part of its business.

(iv) Notes payable-trade or checks accepted by a Party hereto have been proven as insufficient to make payment, or payment by a Party hereto is otherwise suspended.

(v) A Party hereto is subject to a petition for sale by auction or receives notice that security interests will be exercised against it.

Article XVII. Amendment

No modification or claimed waiver of any provision of the Agreement shall be valid except by written amendment signed by authorized representatives of Licensor, the Distributor, and Licensee.

Article XVIII. Mutual Consultation

Regarding any matters not specifically addressed in the Agreement, or questions concerning the interpretation of the Agreement, the Parties agree to exercise their best efforts to resolve such matters through good faith consultation.

Article XIX. No Transfer of Status

Neither Party hereto may assign, transfer, pledge, or otherwise dispose of its status, or any of its rights and obligations hereunder, for the benefit of a third party, without prior written approval from the other Party hereto.

Article XX. Severability

If any provision or provisions of the Agreement shall be held to be invalid, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Article XXI. Waiver of Contractual Right

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

Article XXII. Governing Law and Dispute Resolution

Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial or other Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Each Party hereto hereby waives general and jury trials under applicable laws and regulations in any legal action initiated by or against it in connection with the interpretation, validity, or performance of the Agreement.

Article XXIII. Notices

The provisions of Articles 10, 12, 13, 14.2, 20 through 22, and 23 hereof shall survive the termination of the Agreement.

Appendix A The Terms of Use

The "Kikuzo II Visual for Library" is an Internet-based news database retrieval service (the "Service") provided by The Asahi Shimbun Company (the "Licensor"). The Service is available only to users ("Users") who accept the terms and conditions of use set forth hereunder, and are permitted to use the Service by universities, libraries and other persons that are granted license to use the Service ("Licensee").

1. All right, title and interest, including without limitation, all copyrights and intellectual property rights to the Service and the database comprising the Service vest with Licensor, and copyright and other rights to news, photographs, and other data contained therein (the "Data") vest with Licensor and/or other rightholders of Data, and that Users acquires no proprietary interest in the Service, the database comprising the Service or Data. Such rights shall at all times be possessed by the Licensor and/or other rightholders of Data mentioned in this Article, and their successors. Users may not use the Service, the database comprising the Service or the Data in any fashion that infringes the copyrights or proprietary interests therein, and may not remove or obscure any copyright notice or other notices contained in the Service, the database comprising the Service or the Data.

2. A User is permitted to use the Service solely for personal purposes such as browsing, inquiries or research. A User may also print out or produce digital copies of the retrieved results solely for the personal use stipulated above, provided that the volume of such printouts shall be reasonable and consistent with such personal use. The User must follow any and all instructions from the Licensee in relation to the access and the use of the Service.

3. In connection with the Service and the Data, a User may not be allowed to take the following actions:

(i) Reproducing of the Data in violation of the present Terms of Use, applicable copyright laws, and international treaties;

(ii) Use of the Data that could infringe a third party's privacy, integrity, and / or other rights;

(iii) Use of the Service as a source of language analysis, or to run an automatic crawling of information through the Service;

(iv) Distributing mails and other forms of advertisement while extracting the contact information contained within the Data;

(v) Unauthorized use of the Service, including searches which could either damage or overload Licensor's system and equipment, and which could cause interference with the normal provision of the Service. In such a case, Licensor may proceed to suspend the use of the Service.

4. Licensor makes no representation or warranty, direct or implied, and expressly disclaims any liability with respect to any part of the content or functionality of the Service, including without limitation, the completeness, accuracy, validity, and fitness for a particular purpose.

The Users acknowledge that the Data contained in the Service constitutes archives of information, in general, as they were originally published in Licensor's past publications such as newspapers and magazines, and that they are not re-edited for the purpose of the Service. Licensor shall not be held liable in any way for direct, indirect, exceptional, punitive, secondary or accidental damages incurred by Users due to the unavailability of, or a delay in the provision of, the Service, even if the Parties had been aware of the potential damage.

5. Use of the Service may be suspended when a User violates the Terms of Use. Such a User must either return or erase all the Data accumulated in such an unauthorized way. Licensor may initiate legal action against such a User in connection with such unauthorized use.

6. Any controversy or claim arising out of or relating to this Terms of Use, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial or other Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Each Party hereto waives trials under applicable laws and regulations under any legal action initiated by or against it in connection with the interpretation, validity, or performance of the Agreement.

7. Should any of the Terms of Use stipulated above become invalid, a User understands that the rest of the Terms of Use are still intact and valid.

8. The terms and conditions of the Terms of Use may be altered. Such alterations shall come into force after Licensor posts the contents of such alterations so that they may be viewed on the screen on which the Service is used.

(Enforced in October 2007)

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Course Reserves (Print and Electronic). Licensee and Authorized Users may use a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered by the University of California.

Electronic Links. The University of California is committed to the use of the emerging OpenURL standard to allow linking to related materials in other locations. If Licensor does not use the OpenURL standard, Licensor staff will provide information to Licensee upon request to assist the Licensee in creating links directly from UC's library catalogs and licensed resources to the content at the journal, issue and article levels.

Amount of Authorized Use.

Unlimited Access. Subject to the terms of this Agreement, Licensee and its Authorized Users shall have unlimited access to the Licensed Materials.

Schedule A

Name of the Licensee University of CaliforniaName of the Administrator **TEXT DELETED**Title of the Administrator **Japanese Studies Librarian, UCLA**Contact Person(s) E-mail **TEXT DELETED**

Method of access verification (please tick)

☐ IP addresses ☐ IP addresses AND ID and PasswordNumber of concurrent access : 2Global IP addresses: See next pagesAnnual Charge : **TEXT DELETED** for Mar.-Dec. 2009

Subscription Period(mm/dd/yy~mm/dd/yy) 03/01/09-12/31/09

Global IP addresses:

UC Berkeley

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UCLA

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UC Merced

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UC San Diego

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UC Santa Barbara

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UC Santa Cruz

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UC Office of the President - California Digital Library

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