

RDA Toolkit License Agreement

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Licensing Institution: _____
Address: _____

Contact person responsible for administration of RDA Toolkit:

Name: _____
Address: _____

Telephone : _____
Fax: _____
E-Mail: _____

1. Definitions.

- 1.1. **Site.** Site means (i) an individual location, or (ii) a single institution having multiple libraries or other institutions/organizations at the same location, where such libraries or institutions/ organizations are associated under one integral institution, provided said libraries or institutions/organizations have a single, shared point of shipment and billing/point of contact address. The term "Site" does not include a consortium of libraries or other institutions/ organizations, multi-campus institutions, shared local systems, state-, province-, county- (or equivalent) wide networks or secondary relationships with shared facilities.
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- 1.3. **Commencement Date.** Commencement date shall mean the date that Licensor sends an electronic message informing Licensee that the subscription to RDA Toolkit has begun.
- 1.4. **Licensee.** Licensee shall mean the institution or entity named at the beginning of this license or shall mean the institution or entity named in the subscription resulting from an electronic transaction. If entity is a consortium or other group of entities, each individual entity is identified in Schedule 1 at the end of this license.
- 1.5. **Licensor.** Licensor shall mean the American Library Association, Chartered Institute for Library and Information Professionals (UK), Canadian Library Association. The American Library Association represents that it has the power to enter into this Agreement on behalf of each Licensor.
- 1.6. **RDA Toolkit.** RDA Toolkit means the content, material, resources and information available or accessible on Licensor's website www.rdatoolkit.org.

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3. Authentication details. Upon acceptance of Licensee's order, Licensee will be provided with authentication details that will permit Licensee to access the RDA Toolkit. Licensee will exert reasonable efforts to comply with the conditions of Paragraph 2, and agrees to promptly notify Licensor of any use of RDA Toolkit of which it becomes aware that is contrary to those conditions, and to take all reasonable steps to terminate such activity. Licensor's sole obligation with respect to authentication details shall be to exert reasonable efforts to maintain the confidentiality of Licensee's authentication details in Licensor's possession and to terminate lost or stolen details upon receipt of Licensee's notice.
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 - 4.1. Licensee and Authorized Users may make all use of the Licensed Materials as is reasonably required for non-commercial private, institutional, instructional, educational, reserve, or research use, consistent with applicable laws and regulations including the Fair Use Provisions of United States and international copyright laws. Educational use includes a reasonable amount of sample content (less than a full chapter of RDA in any instance) used by Licensee and Authorized Users for educational purposes only. All other rights are reserved to Licensor. The Licensee and Authorized Users may not alter or modify any content.
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5. License Fee. The Licensee shall pay Licensor in full the Initial License Fee set forth in the order prior to the Commencement Date.
 - 5.1. Once the total number of purchased users is reached, the RDA Toolkit system will not allow additional users to access the site until an active user logs off. Authentication details may not be shared or transferred to any third-party.
 - 5.2. Fees specified under this Agreement are exclusive of any taxes. Unless Licensee is a tax-exempt entity as noted below, Licensee must pay all applicable taxes, including any sales taxes, value added taxes, and import taxes, other than taxes on Licensor's net income, arising out of Licensee's use of RDA Toolkit or the rights granted under this Agreement. If Licensor, Licensee's-affiliated regional network or Licensor's authorized distributor is required to collect a tax to be paid by Licensee, Licensee shall pay such tax to such party, as appropriate, on demand. Fees incurred from Section 5.2 may be rebated to Licensee in the event that Licensee can show that it is has a tax-exemption certificate for federal excise and all state and local taxes.
6. Term and Renewal.
 - 6.1. Term. This License commences on the Commencement Date as defined above and shall extend through the initial subscription period requested by the License. Typically one-year calendar however additional months or multiple years may be added if specified and paid by Licensee.
 - 6.2. Renewal. If Licensee opts to renew upon receiving notice of the expiration date of the subscription, then this agreement shall remain in force. The subscription shall be renewed only at the request of the Licensee.
7. Termination.
 - 7.1. Termination for Convenience. Licensee may upon written notice to Licensor cancel Licensee's license to RDA Toolkit at any time. Upon notice of cancellation, this License shall automatically terminate. Licensee may terminate

its rights under this Agreement at any time by notice to Licensor, provided that in the event of such termination, Licensee shall not be entitled to a refund of any license fees or other amounts paid.

- 7.2. Termination for Cause. In the event that either party believes that the other materially has breached any obligations under this Agreement, or if Licensor believes that 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 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 this time period, the non-breaching party shall have the right to terminate the Agreement without further notice.
- 7.3. Effect of Termination. Upon Termination of this Agreement for any reason, the license to RDA Toolkit by Licensee and Authorized Users shall be terminated. In the event of termination for cause by the Licensee, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid to Licensor by Licensee for any remaining period of the Agreement from the date of termination. The provisions of Sections 7.3, 8, 10, and 11 shall survive any expiration or termination of this Agreement.

8. Ownership.

8.1. RDA Toolkit, any copy of all or a portion thereof and all rights in each are the property of Licensor (or its third-party licensors) and all rights, title and interest therein shall remain in Licensor (or its third-party licensors). RDA Toolkit is subject to all applicable copyright (including Fair Use), database protection, and other rights of the stated owner and publisher under the laws of the United States and other countries. Copyright notices may not be removed, obscured, or modified in any way. RDA and RDA Toolkit are either registered or unregistered trademarks of Licensor. Licensee shall not take any action to jeopardize, limit, or interfere in any manner in Licensor's ownership or rights with respect to the RDA Toolkit.

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10. Disclaimer of Warranties; Limitation of Liability; Indemnification.

10.1. Licensor warrants that it is entitled to grant the License granted in this Agreement and is authorized to execute this Agreement. EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE, LICENSOR MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO RDA TOOLKIT, INCLUDING THE QUALITY, ORIGINALITY, SUITABILITY, SEARCHABILITY, AVAILABILITY, OPERATION, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL BE LIABLE FOR: EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE LICENSE GRANTED HEREUNDER, AND AS TO ALA, THE USE OR INABILITY TO USE RDA TOOLKIT, TERMINATION OF THIS AGREEMENT, OR THE LOSS OF DATA, BUSINESS, OR GOODWILL, EVEN IF LICENSOR IS ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER LICENSOR SHALL NOT BE LIABLE FOR: EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH LICENSOR'S PERFORMANCE UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT ALLOWED BY LAW, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF ANY BREACH OR TERMINATION OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY THE LICENSEE TO LICENSOR FOR THE LICENSE FEE FOR THE CURRENT

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10.2. The Licensee shall use reasonable endeavors to: a) notify all Authorized Users of the importance of respecting the intellectual property rights in RDA Toolkit; b) notify Authorized Users of the terms and conditions of this license and take steps to protect RDA Toolkit from unauthorized use or other breach of this License; and c) will make reasonable efforts to ensure that only Authorized Users are permitted access to RDA Toolkit. Upon becoming aware of any unauthorized use or other breach, Licensee shall immediately notify Licensor and take all reasonable and appropriate steps, both to ensure that such activity ceases and to prevent any recurrence.

11. Miscellaneous.

11.1. **Modifications.** This Agreement constitutes the entire agreement between the parties and may be amended only by a written instrument signed by both parties except as set forth below. For the product (RDA Toolkit) itself as opposed to this Agreement, Licensor may determine, add to, delete from or change at any time the technical and functional specifications, form and formats or availability of features of RDA Toolkit comparable to current standards in the scholarly information provision industry, including notifications.

11.2. **Assignment.** Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable, sublicensable or otherwise transferable by Licensee by operation of law or otherwise. Licensor may transfer or assign this Agreement or any rights or obligations under this Agreement upon thirty (30) days' written notice to Licensee. Any such assignment must subject the third party to all the same responsibilities, defenses and claims the Licensee would have against the Licensor. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11.3. **Waiver.** No waiver of any right or consent to any breach hereunder shall be effective unless in writing and signed by the party claimed to have waived or consented. No waiver of any right or consent to any breach shall constitute a waiver of any other right or consent to any other breach.

11.4. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the United States of America without regard to principles of conflicts of law.

11.5. **Notice.** Any notice of breach or termination under this Agreement shall be in writing, signed by the party giving notice, and shall be deemed properly given upon delivery into the mail of the country of the party giving notice, postage prepaid, registered or certified return-receipt-requested, or upon delivery to an established international courier (i.e., Federal Express, DHL, UPS), with a signature acknowledging receipt by the contact person responsible for administration of RDA Toolkit required.

11.6. **Headings.** The headings used in this Agreement are for convenience only and are not to be considered in construing the terms of this Agreement.

I have read and agree to adhere to and abide by all the terms and conditions stated above, and I certify that I am authorized to sign this Agreement on behalf of the Licensee identified on the first page of this agreement.

Licensee

ALA Digital Ref.

Name

James Hennelly

Name

Title

Director, ALA Digital Reference

Title

Signature

Signature

Date

Date

License Commencement Date