

RDA Toolkit License Agreement

This Agreement is between Licensee as defined below and Licensors as defined below. Licensors' written acceptance may be indicated by the sending of an electronic message to Licensee informing Licensee that the subscription to the RDA Toolkit has begun.

Licensing Institution:

Address:

Contact person responsible for administration of *RDA Toolkit*:

Name:

Address:

Telephone :

Fax:

E-Mail:

1. Definitions.

- 1.1. Authorized User. Authorized User means an employee of Licensee who is responsible for creating bibliographic records or metadata for materials or electronic resources offered by Licensee to its patrons or an independent contractor retained by Licensee for such purpose. Authorized Users include full and part-time students and employees (including faculty, staff, affiliated researchers and independent contractors) of Licensee and the institution of which it is a part, regardless of the physical location of such persons, and who are ordinarily permitted to access the Licensee's institution's network from within the Site or from such other places where "Authorized Users" work or study and who have been issued by the Licensee or the Licensee's institution a password or other authentication. Individuals employed by an administratively distinct and geographically non-contiguous campus or site, or who are affiliated with any organization not administratively part of the Licensee's institution, e.g. any commercial organization, non-profit organization, or governmental unit administratively distinct from the Licensee, may not be treated as Authorized Users under this License.
- 1.2. Commencement Date. Commencement Date shall mean the date that Licensee places an order for RDA Toolkit with Licensors and the order is accepted by Licensors.
- 1.3. Licensee. Licensee shall mean the institution or entity identified above.
- 1.4. Licensors. Licensors 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 Licensors.
- 1.5. RDA Toolkit. RDA Toolkit means the content, material, resources and information available or accessible on Licensors' website www.rdatoolkit.org.
- 1.6. 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.

2. Grant of License and Subscription Rights. Licensors hereby grants to Licensee a non-exclusive, non-transferable, non-assignable license to access materials included in the *RDA Toolkit* under the terms and conditions set forth herein. Each separate Site requires its own RDA Toolkit subscription unless negotiated as part of a group purchase with Licensors. This License extends only to the Licensee for the number of Authorized Users selected and paid for by Licensee, individually and may not be transferred to, or extended to, others. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided to Licensors by Licensee or by other mutually agreeable means such as a referring URL. Licensee shall be responsible for verifying the status of all Authorized Users and shall cooperate with Licensors in the implementation of additional security procedures as they are developed. Licensee and Authorized User's license is also subject to the End User License Agreement (EULA) applicable to the RDA Toolkit, which can be found at www.rdatoolkit.org and is attached hereto as Exhibit A. In the event of any conflict between the terms of this Agreement and the EULA, the terms of this Agreement shall control.
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 is solely responsible for all security for and all use, including unauthorized use, of the RDA Toolkit initiated by such authentication details (including all claims arising therefrom), and shall promptly notify Licensors in writing of lost or stolen passwords, logins, or other authentication details. Licensee shall pay Licensors at Licensors's prevailing rates for any such unauthorized use of the RDA Toolkit. Licensors's sole obligation with respect to authentication details shall be to exert reasonable efforts to maintain the confidentiality of Licensee's authentication details in Licensors's possession and to terminate lost or stolen details upon receipt of Licensee's notice.
4. Permitted Uses.
 - 4.1. The Licensee and Authorized Users are permitted online access to RDA Toolkit and may retrieve, display, or save text, search results or other information from RDA Toolkit solely for the private use, instructional use, reserve use or research of the Licensee or Authorized Users. Licensee and Authorized Users may view screen displays and PDFs of the data accessible via the RDA Toolkit and make copies or printouts of those screen displays or PDFs only as are reasonably required for Licensee's use of the RDA Toolkit as authorized hereunder. All rights not expressly granted are reserved to Licensors. The Licensee and Authorized Users may only use this online access in a way that conforms with all applicable law and regulations, and may not alter or modify any content.
 - 4.2. Licensee shall use the RDA Toolkit solely as authorized herein. All other uses are prohibited without specific permission of the Licensors including but not limited to: (a) printing of multiple copies, (b) reprinting for publication, including course packs; or Web publication, (c) commercial or promotional use (i.e., use in connection with activities intended to generate revenue), or (d) the systematic making of print or electronic copies for transmission to persons or institutions other than Licensee or Authorized Users. Neither Licensee nor Authorized Users acquire ownership rights to the RDA Toolkit. The RDA Toolkit and its contents may not be disclosed, reproduced, distributed or transmitted in any form without the prior written consent of Licensors except as expressly permitted hereunder. The RDA Toolkit may not be resold or transferred. Licensee shall not omit, obscure or hide from any Authorized User any disclaimers, proprietary rights notices or any other terms and/or conditions intended to be displayed to an Authorized User by Licensors.
5. License Fee. The Licensee shall pay Licensors in full the Initial License Fee set forth in the order prior to the Commencement Date.
 - 5.1. At no time shall access to and use of RDA Toolkit be made available to more than the licensed number of designated Authorized Users. Licensee shall ensure that use of the RDA Toolkit does not exceed the allotted number of Authorized User seats ordered and paid for by Licensee. Additional Authorized Users require submission of a new order and the payment of additional license fees to Licensors. Licensee may not allow use of an Authorized User details by more than one individual Authorized User at a time. Authentication details may not be shared or transferred to any third-party. Licensee shall allow Licensors, upon reasonable notice, to audit its use of the RDA Toolkit to ensure that usage is in accord with the terms of this Agreement.
 - 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 Licensors's net income, arising out of Licensee's use of RDA Toolkit or the rights granted under this

Agreement. If Licensor, Licensee's Licensor-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. This Section 5.2 may not be applicable to Licensee in the event that Licensee can show that it 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 one-year calendar anniversary of such date, or multiple years if specified and paid by Licensee.
- 6.2. Renewal. This agreement shall be automatically renewed at the end of the current term for a successive one-year term (or longer if specified and paid by Licensee) unless either party gives written/email notice of its intention not to renew prior to expiration of the current term. In the event of renewal, Licensee shall pay Licensor in full the then current license fee for RDA Toolkit as of the effective date of each new term. Ninety (90) days prior to the end of each term (either initial or renewal), Licensor will notify Licensee that Licensee's license will automatically renew at the end of the current term. If Licensee notifies Licensor, in writing, at least thirty (30) days prior to the renewal date that it does not wish to renew its license, Licensee's license will terminate at the end of the current term. If Licensee does not provide Licensor with such notice, Licensee's license will be renewed for the next period and Licensee will be invoiced for the applicable license fee.

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, any license fees previously unpaid or other amounts due become immediately due and payable and 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 user, the license to the 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. The 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, 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.
- 8.2. Content entered by Licensee's Authorized User becomes part of the RDA Toolkit and Licensee and Authorized Users automatically grant a license to Licensor to include the Content as part of the RDA Toolkit copyrighted product going forward. The rights granted are non-exclusive. The EULA that users agree to when first creating a user profile on the site informs them of this condition related to creating content in the RDA Toolkit For any Content which is marked "Private" ("Private Content") Licensor will use its best efforts to keep such material from being disclosed to any party other than Licensor and the Authorized User who submitted the Private Content, provided, however, Authorized users specifically acknowledge that Licensor shall have no liability for any inadvertent disclosure of any content marked Private.

9. Access. Following online access approval, the Licensee and Authorized Users will be permitted to attempt online access to RDA Toolkit at any time. Licensor, however, will not be liable for any delay, down time, transmission error, software or equipment incompatibilities, force majeure or other failure of performance. Licensor does not warrant that access to the RDA Toolkit will be uninterrupted.

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. LICENSOR SHALL NOT BE LIABLE FOR: EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE LICENSE GRANTED HEREUNDER, THE USE OR INABILITY TO USE RDA TOOLKIT, LICENSOR'S PERFORMANCE UNDER THIS AGREEMENT, 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. TO THE MAXIMUM EXTENT ALLOWED BY LAW, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF LICENSOR 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 YEAR IN WHICH SUCH CLAIM, LOSS OR DAMAGE OCCURRED, WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING WITHOUT LIMITATION, CLAIMS DUE TO NEGLIGENCE.

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

10.3. Licensee agrees to Indemnify and hold Licensor harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any claim or legal action taken against Licensor related to or in any way connected with any use of the Licensed Materials by the Licensee or Authorized Users or any failure by the Licensee to perform its obligations in relation to this License.

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. 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 the RDA Toolkit. Licensee shall be bound thereby upon Licensor giving notice, which may be accomplished by online screen display or in applicable product descriptions or documentation.

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. 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 State of Illinois and the United States of America without regard to principles of conflicts of law. Venue for

resolution of any disputes shall reside solely in the Federal and State Courts in Cook County, Illinois. Each party consents to the personal jurisdiction of said court.

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 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-Publishing

Name

Donald E. Chatham

Name

Title

Director, ALA Publishing

Title

Signature

Signature

Date

Date

License Commencement Date