

RDA Toolkit License Agreement

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

Licensing Institution: BC Electronic Library Network (BCELN)
Address: Discovery 2 – 112
Simon Fraser University, 8888 University Drive
Burnaby, British Columbia
V5A 1S6

Signature _____

Licensing Institution:

Partenariat des bibliothèques universitaires du Québec
(PBUQ)

Address:

Université de Montréal c/o Partenariat des
bibliothèques universitaires du Québec

C.P. 6128, Succ. Centre-Ville

Montréal QC H3C 3J7 Canada

Signature

Licensing Institution:
Address:

BC Libraries Cooperative (BCLC)
Suite 320, 185-911 Yates Street, Victoria BC V8V
4Y9

Signature

Licensing Institution:

Council of Atlantic Academic Libraries (CAAL-
CBPA)

Address:

120 Western Parkway, Suite 202
Bedford, Nova Scotia, Canada B4B 0V2

Signature

Licensing Institution:

Canadian Research Knowledge Network (CRKN)

Address:

1309 Carling Ave PO Box 35155 Westgate Ottawa,
ON K1Z 1A2

Signature

Licensing Institution:
Address:

Manitoba Library Consortium, Inc. (MLCI)
Manitoba Library Consortium Inc.
c/o Library Administration
University of Winnipeg
515 Portage Ave
Winnipeg MB Canada R3B 2E9

Signature

Licensing Institution:

New Brunswick Public Library Service (NBPLS)

Address:

570 Two Nations Crossing, Suite 2
Fredericton, N.B.
E3A 0X9

Signature

Licensing Institution:

Ontario Colleges Library Service (OCLS)

Address:

Ontario Colleges Library Service

789 Don Mills Rd, Suite 701

Toronto, Ontario, M3C 1T5

Signature

Licensing Institution:
Address:

Ontario Council of University Libraries (OCUL)
130 St. George Street, Toronto, ON M5S1A5

Signature

Licensing Institution:

Saskatchewan Electronic Resources Partnership
(SERP)

Address:

409A Park Street Regina SK S4N 5B2

Signature

Licensing Institution:
Address:

The Alberta Library (TAL)
#623, 7 Sir Winston Churchill Sq NW
Edmonton, AB T5J 2V5

Signature

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.

1.2. Authorized User. Authorized User means an employee, approved independent contractor of Licensee, and those 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. Users outside a “Site” as defined in 1.1. above are not Authorized Users under this License.

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.

2. Grant of License and Subscription Rights. Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-assignable license to access materials included in RDA Toolkit under the terms and conditions set forth herein. Each separate Site requires its own RDA Toolkit license regardless of subscription mechanism. Subscriptions may be negotiated individually or as part of a group purchase with Licensor. This License extends only to the Licensee for the number of Authorized Users selected and paid for by Licensee, and may not be transferred to, or extended to, others. Authorized Users shall be identified and authenticated by RDA Toolkit authentication methods, which follow industry standards. Licensee shall be responsible for verifying the status of Authorized Users and shall cooperate as reasonably and practically as possible with Licensor in the implementation of additional security procedures as they are developed. Users are subject in addition to this agreement to the RDA Toolkit End User License Agreement (EULA) which can be found at <http://access.rdatoolkit.org/static.php?page=profileterms>. Acceptance of the (EULA) is part of the User Profile sign-up process. 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 will exert reasonable efforts to comply with the conditions of Clause 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.

4. Permitted Uses.

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.

4.2. Neither Licensee nor Authorized Users acquire ownership rights to the RDA Toolkit. 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 Licensor.

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 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.

8.2. Licensee's Authorized Users may elect to create content under the versions of Creative Commons license (<http://creativecommons.org>) made available within RDA Toolkit such that Licensor may include such Content as part of the RDA Toolkit product going forward. The rights granted are non-exclusive.

9. Access. Following online access approval, the Licensee and Authorized Users will be permitted to attempt online access to RDA Toolkit at any time. The Licensor shall use reasonable efforts to facilitate access to the site as much as possible and provide the Licensee with a quality of service comparable to current standards in the scholarly information provision industry. 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. Licensor does not warrant that access to 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. 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

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 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 Canada 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.

We agree with the terms set out in this letter.

DATED _____

FOR THE LICENSOR: **ALA Digital Ref.**

Signature: _____

Name (in block capitals): _____

Position / Title: _____ Director, ALA Digital

Reference _____

Schedule A
Members

BC Electronic Library Network (BC ELN)

British Columbia Institute of Technology
Camosun
Capilano University
Emily Carr University of Art + Design
Justice Institute of British Columbia
Kwantlen Polytechnic University
North Island College
Northern Lights College
Okanagan College
Selkirk College
Simon Fraser University
University of British Columbia
University of Northern British Columbia
University of the Fraser Valley
University of Victoria
College of New Caledonia
Douglas College
Vancouver Community College

Partenariat des bibliothèques universitaires du Québec (PBUQ)

Bibliothèque et Archives nationales du Québec
Bishop's University Library
Concordia University Libraries - Canada
École de technologie supérieure
Ecole nationale d'administration publique
Ecole Polytechnique de Montreal
HEC Montréal
Institut nationale de la recherche scientifique (INRS)
McGill University Library
Université de Montréal/Bibliothèque - ACQ
Université de Montréal/EBSI
UQAM
Université de Sherbrooke

Université du Québec en Abitibi-Témiscamingue
Université du Québec à Chicoutimi (UQAC)
Université du Québec à Rimouski (UQAR)
Université du Québec à Trois-Rivières (UQTR)
Université du Québec en Outaouais - Gestion documentaire
Bibliothèque
Université Laval - Bibliothèque
Université TÉLUQ

BC Libraries Cooperative (BCLC)

Burnaby Public Library
Fraser Valley Regional Library
Greater Victoria Public Library
New Westminster Public Library
Penticton Public Library
Surrey Public Library
Thompson Nicola Regional Library
Vancouver Island Regional Library
West Vancouver Memorial Library

Council of Atlantic Academic Libraries - Conseil des bibliothèques postsecondaire d l'Atlantique (CAAL-CBPA)

Dalhousie University
Dalhousie University - LIS
Memorial University of Newfoundland
Mount Allison University
Mount Saint Vincent University
Nova Scotia Community College - LIT Program (formerly School of Business account)
Nova Scotia Community College - Waterfront Campus
NSCAD University
Saint Mary's University Canada
Université de Moncton
Université de Moncton - Edmundston Campus
University of New Brunswick
University of Prince Edward Island

Canadian Research Knowledge Network – Réseau canadien de documentation pour la recherche (CRKN-RCDR)

Canadian Research Knowledge Network

Manitoba Library Consortium, Inc. (MLCI)

Brandon University
Pembina Trails School Division

Red River College
St. James - Assiniboia School Division
University of Manitoba
University of Winnipeg
Winnipeg Public Library
Winnipeg School Division

New Brunswick Public Library Service (NBPLS)
New Brunswick Public Library Service

Ontario Colleges Library Service (OCLS)

Algonquin College
Algonquin College - LIS
Cambrian College
Confederation College
Fanshawe College
Fleming College
George Brown College
Georgian College
Humber College
La Cité collégiale
Lambton College
Loyalist College
Mohawk College
Mohawk College - LIS
OCLS
Seneca College Libraries
Seneca College Libraries - LIT Program
Sheridan College Libraries
St. Lawrence College

Ontario Council of University Libraries (OCUL)

Algoma University
Brock University
Carleton University
Lakehead University
McMaster University
Nipissing University/Canadore College
OCAD University
Queen's University
Metropolitan University of Toronto
Trent University
University of Guelph

University of Ontario Institute of Technology (UOIT)
University of Ottawa
University of Toronto Libraries
University of Waterloo
University of Western Ontario
University of Western Ontario - LIS
University of Windsor
Wilfrid Laurier University
York University

Saskatchewan Electronic Resources Partnership (SERP)

Law Society of Saskatchewan Library
Saskatchewan Polytechnic Library
Saskatchewan Provincial Library & Literacy Office
St. Peter's College Library
University of Regina
University of Saskatchewan

The Alberta Library (TAL)

Alberta University of the Arts
Athabasca University
Banff Centre
Burman University
Chinook Arch Regional Library System
Concordia University
Edmonton Public Library
Northwestern Polytechnic
Lakeland College
Medicine Hat College
Mount Royal University
NorQuest College
Northern Lakes College
Parkland Regional Library
Prairie College
Red Deer Polytechnic
Red Deer Public library
SAIT
Shortgrass Library System
St. Albert Public Library
St. Mary's University
University of Alberta
University of Calgary
University of Lethbridge

