



NewsBank License Agreement

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 34108-2734 ("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 NewsBank 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 NewsBank 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 NewsBank 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 library 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, which do not unreasonably impair or unreasonably violate the Customer's legitimate use of the Product. If such restrictions or disclaimers unreasonably impair or unreasonably violate the Customer's legitimate use of the Product, the Customer may terminate this Agreement on thirty (30) business days' notice and will receive from NewsBank a prorated portion of the then current annual access fee that was paid by Customer.

- 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. In the event of a conflict between the terms listed in the Products and those set in this Agreement, the terms in this Agreement shall govern the use of the Products.

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.
 - ii. Customer shall not provide any material from any Product to fulfill an interlibrary loan request from another library or 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. NewsBank shall use commercially reasonable efforts to ensure that NewsBank's server or servers have sufficient capacity and rate of connectivity to provide the Customer and its Authorized Users access to the Product with continuous service 7 days a week and with an average of 98% up-time per month. The 2% down-time includes scheduled maintenance and repair. Scheduled down-time will be

performed at a time to minimize inconvenience to Customer and its Authorized Users. If the Product fails to operate in conformance with the terms of this Agreement, Customer shall immediately notify NewsBank, and NewsBank shall promptly use commercially reasonable efforts to restore access to Product as soon as possible. In the unlikely event that NewsBank is not able to restore access to the Product and the Customer is not able to access the Product as a result for an unreasonable amount of time, then Customer will receive from NewsBank a prorated portion of the then current annual access fee that was paid by Customer or an extension of to the Customer's then current subscription period equal to the amount of time the Customer could not access the Product.

- 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, if any, allowed by Massachusetts law, the Customer shall indemnify NewsBank against any claims or losses, including reasonable attorneys' fees, arising in whole or in part from any violation by the Customer of subparagraph 6.c. Nothing in this Agreement shall be construed to waive any aspect of Customer's sovereign immunity. Customer shall have no liability or indemnity obligation for claims or losses arising from actions of users unless and only to the extent that Customer fails to take reasonable steps to ensure proper use and the claims or loss result from such failure. Customer will be deemed to have taken reasonable steps for purposes of this section if it does the following: notifies all users that the Product is protected by copyright and can only be used in accordance with the terms and conditions of the Product license, only permits access to the Product by Authorized Users, timely reports to NewsBank any copyright violation or violation of this license by a user of which it becomes aware, takes action or coordinates action with NewsBank (as applicable) to immediately cut off access to such user (to the extent possible) or remedy a breach of this Agreement, and takes such reasonable steps as requested by NewsBank from time to time. Notwithstanding the foregoing, should NewsBank fail to cut off access to a user (to the extent possible) promptly upon learning of such user's violation, MLS shall have no liability or indemnity obligation to NewsBank whatsoever. NewsBank's responsibility to cut off access for such known violations is not limited to notification of violation by the Customer.
- 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.

7. Term and Termination

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. NewsBank may terminate this Agreement for breach on thirty business days' notice.

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. If either party commits a material or persistent breach of any term of this Agreement, the non-breaching party will provide thirty (30) days prior written notice to the breaching party, allowing the breaching party thirty (30) days to remedy the breach. If the breach is not cured, the non-breaching party may terminate the Agreement upon written notice. NewsBank shall not be required to issue any refunds or credits for any fee(s) paid to NewsBank, except Customer shall receive from NewsBank a prorated portion of the then current annual access fee that was paid by Customer due to a material breach by NewsBank that is not cured within a minimum curing period of 30 days.
- b. Disputes will be subject to Massachusetts 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 state and/or federal courts of the party against whom that suit 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. Special Provisions

- a. Legal Authority: The Customer signs this Agreement on behalf of its participating member institutions as set forth in the Subscription Form (hereafter referred to herein as the "Participating Institution" or "Participating Institutions"). 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.
- b. Usage Statistics: NewsBank collects user statistics continually throughout the day. These statistics provide data on the number of times a database has been searched, by which site and number of articles viewed and retrieved. NewsBank will provide individual site usage stats via a special Web Address (URL) for each participating library based on the access method used. Usage statistics are compliant with International Coalition of Library Consortia standards and are COUNTER (Counting Online Usage of Networked Electronic Resources) compliant. Any usage data compiled by NewsBank will be collected and used in a manner consistent with applicable privacy laws, and the anonymity of individual users and the confidentiality of their searches shall be fully protected.