

# Negotiation for Newcomers

## How to License in an Academic Library

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### Know your institution

Consider the user population size, location, and expectation.

Does your library serve multiple campuses? You may require a multi-site license. If a site has a small user population, you may be able to negotiate naming it on the license, but that site not raising the cost.

Who is the intended audience? You may need to accommodate public patrons through authorized walk-in use. Do you have affiliated researchers who would use this product? The license might only define faculty and students, so watch wording.

Does your library serve the needs of online classrooms? How will users access the resource?

Are you a public institution? If so, there may be state requirements for some of the terms of the license.

### Look at model licenses

Model licenses are essentially examples of how a license is constructed and what expectations are of the Licensor and Licensee in a standard agreement. Library consortiums may have models in place that are created by members for the consortial licensing manager to better represent their needs when in negotiation with vendors. Find model licenses on consortium websites or through library associations.

Model licenses are useful educational tools for learning the parts of a license.

They are also helpful to identify possible issues and how those issues are addressed. The Licensee may consult a model license when suggesting alternate wording to a Licensor during negotiation.

### Make a checklist

Checklists are quick visual guides for navigating sometimes complicated terms. A checklist may be used in the creation of a licensing policy as well as part of the process of reviewing a license.

What goes into a checklist? Checklist items may include common elements such as whether the Licensor is the rights holder of the electronic resource, how the parties are identified, then more unique needs of the institution that must be provided for, the library's stance on liabilities and legal obligations such as indemnification, issues in preservation, access and distribution expected by collection development staff, and possible requirements of the institution by law.

### Establish policy first

Licensing policy enforces consistency in negotiation and facilitates understanding among library staff assessing collection development once a license is reviewed. It also gives the negotiating librarian a starting point with the vendor.



Licensee

Licensor representative or their website provides a standard license or amendment appropriate to the electronic resource



Licensor

Licensee reviews the terms and requests modifications of terms and/or supplies possible addendums

Licensor reviews the new language and provides feedback with a modified document if Licensee requests are accepted

Licensee reviews modified license/amendment again and decides whether to sign



Licensee

### Indemnification

Indemnification can go two ways: by the Licensor or by the Licensee. Watch for language calling for the Licensee, the library, to indemnify the Licensor. This is sometimes seen as a red flag. An indemnity is the obligation to legally defend or pay legal fees to defend the other party from a third party's claims that may result from the agreement.

### Archiving & Perpetual Access

Electronic resources are an investment, so what happens if a resource is no longer published or when the subscription ends? Licenses may provide for an institution preserving the resource through the library's archived copy, an option to purchase a copy preserved on media, or the Licensor may be registered with a named service like Portico. Licenses may also provide for continued access to purchased periods through the vendor's website in the case of perpetual access. Seeking perpetual access rights may be included in a library's licensing policy.

### Resource Sharing

A license may specify the types of resource sharing that may occur when the Licensee interprets Fair Use. The license may only permit the transaction of a printed copy, secure electronic transaction (sometimes naming a specific technology, such as Ariel document delivery), or apply the CONTU Guidelines (up to five articles copied from a single periodical in a year). The license may state whether an authorized may share a portion of the licensed material with a third party for scholarly sharing. There may also be provisions for an electronic classroom, such as authorized links to electronic resources. The Licensee's permission to share content through electronic access or the Licensee may try to negotiate the terms to avoid naming transaction services that could be replaced by new technology.

### Termination

The license may include conditions for terminating a license, such as only if there is a breach by the Licensee, at the convenience of the Licensor or Licensee with specified days notice, right to cancel in the event of the Licensor's financial distress, or right to cancel by a certain period of the subscription cycle.

### Jurisdiction

Look for the specified venue where legal action to resolve a dispute between Licensor and Licensee may take place, especially if your institution is restricted by law to its home state.

### User Restrictions

Licenses will state specific user groups and may include a section with explanations. You may need to negotiate for walk-ins (unaffiliated persons using an electronic resource on-site), number, or define a user's affiliation to the library's advantage. What population does collection development intend this product to serve? Does the Licensee have the technological abilities to block an unauthorized group while it provides access to those permitted?

### Accessibility

Does your library have a policy in place that mandates a licensed product's accessibility compliance? Some licenses may include statements that will support adaptive technologies or other standards.

### Fair Use

The Licensee, as a library, may use Section 107 of the U.S. Copyright Act of 1976, as a defense of its means of access and distribution of a portion of the licensed product. The license may have a clause in support of this law. Because the law was written in a different context than libraries know today, there may be a dispute over interpretation for electronic resources. Accordingly, the Licensor or Licensee may negotiate the terms for library access and distribution in other parts of the license.