What’s in a Contract?
Wordsmithing Service Agreements for Better Outcomes

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What Is a Contract?
These Are Contracts…
But So Is This...

I Agree □
Why Do We Have Contracts?
Vendor Contracts
Flexible + Specific
Vendor Licenses
Welcome to the LIBLICENSE Project

The Liblicense Model License, designed to provide a template for libraries negotiating to license digital content, has been updated. The 2014 revision is available on this site on the Model Licenses page.

Increasingly, university and research libraries are being inundated with information that has been created in digital format and transmitted and accessed via computers. As the number of collections in digital formats increase exponentially, more and more libraries and information providers are facing a number of unique challenges presented by this relatively new medium.

Chief among these new challenges is crafting agreements with information owners that adequately assure libraries will continue to provide users with comprehensive and timely access to information in digital formats. Because of several unique properties of digital information, agreements that govern the acquisition and maintenance of traditional paper collections are inadequate in the digital information context. Unlike paper materials, digital information generally is not purchased by the library; rather it is licensed by the library from information providers. A license usually takes the form of a written contract or agreement between the library and the owner of the rights to distribute digital information.

As many librarians responsible for collections know all too well, licensing agreements often are complex, lengthy documents filled with arcane and unfamiliar terms such as indemnity, severability, and force majeure. In an effort to assist librarians (and information providers as well) to understand the issues raised by these licensing agreements, we have prepared an Analysis of Licensing Agreements for Digital Information. The pages that follow include a brief analysis of a number of sample agreements.
Limitations
SITE
ENTRANCE
Authorized Users Only
Perpetual Access
Perpetual Access

Notwithstanding anything else in the Agreement, Licensor grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials accessible during the term of this Agreement. The means by which Licensee shall have access to such Licensed Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement. At its sole discretion, the Licensee may use Portico or other third-party solutions to host the Licensed Materials.
Content Changes
If any portion of the Licensed Materials is transferred to or acquired from another party, Licensor shall use best efforts to ensure that Licensee does not lose access to content subject to this Agreement as a result of the transfer or acquisition. Any archival and perpetual access rights that have been granted shall be honored, whether the Licensor is acting as the transferring or acquiring party. If Licensor is transferring any portion of the Licensed Materials to another party, Licensor will use best efforts to assign all rights and obligations to the assignee. If Licensor is acquiring works that become subject to this Agreement, Licensor will use best efforts to acquire the rights to perform under this Agreement, including but not limited to perpetual access rights.
Data Mining

FORGET DATA MINING.
IF YOU WANT TO KNOW SOMEONE LOOK AT THEIR VODKA.
Authorized Users may use the Licensed Materials to perform and engage in text and/or data mining activities for academic research, scholarship, and other educational purposes, utilize and share the results of text and/or data mining in their scholarly work, and make the results available for use by others, so long as the purpose is not to create a product for use by third parties that would substitute for the Licensed Materials. Licensor will cooperate with Licensee and Authorized Users as reasonably necessary in making the Licensed Materials available in a manner and form most useful to the Authorized User. If Licensee or Authorized Users request the Licensor to deliver or otherwise prepare copies of the Licensed Materials for text and data mining purposes, any fees charged by Licensor shall be solely for preparing and delivering such copies on a time and materials basis.
Fair Use
Fair Use

Nothing in this Agreement shall be interpreted to diminish the rights and privileges of the Licensee or Authorized Users with respect to any of the Licensed Materials, including exceptions or limitations to the exclusive rights of copyright owners, such as fair use, under Section 107 of the U.S. Copyright Act. In the event that any content included in the Licensed Materials is in the public domain or has been issued under a Creative Commons or other open license, Licensor shall not place access, use or other restrictions on that content beyond those found in the open license, where applicable.
Derrida, Jacques.

165 p.; 24 cm.
English and French on facing pages. Includes bibliographical references.

1. Nietzsche, Friedrich Wilhelm, 1844-1900. 2. Language and languages—Style. I. Agosti, Stefano. II. Title
Author Rights

Notwithstanding any terms to the contrary in any author agreement between authors and Licensor, authors who are Authorized Users of Licensee ("Authors"), whose work ("Work") is accepted for publication by Licensor during the Term, shall retain the non-exclusive, irrevocable, worldwide, royalty-free right to use their Work for scholarly and educational purposes, including self-archiving or depositing the Work in institutional, subject-based, national, or other open repositories or archives, and to comply with all grant or institutional requirements associated with the Work. Nothing in this section shall limit any other rights that Licensee or any Author may have to deposit, host, or make available the Work published by Licensor.
Vendor Contracts
Liability

Local call-1-Re-New coin not responsible for false drop of coin
Customer will take reasonable steps to ensure that Customer’s Authorized Users will use the Products according to the terms of this Agreement. The Customer shall indemnify the Company against any claims or losses, including reasonable attorneys’ fees, arising in whole or in part from any violation by the Customer.

The Customer assumes the sole responsibility for all use of the Products by its Authorized Users.

Customer agrees to use reasonable efforts to notify its Authorized Users of the terms of this Agreement and of Authorized Users’ responsibility to use the Products according to the terms of this Agreement. Authorized Users are not party to this Agreement. The Provider acknowledges that Customer cannot monitor, control, or proactively enforce the behavior of Authorized Users.
Nondisclosure
**Nondisclosure**

Each Party may have or may become aware of information regarding the other Party that is confidential or proprietary in nature, including but not limited to information concerning its business, processes, donors or funders, administration and related offices, software, marketing, pricing, formulas, customers, suppliers, vendors, operations, and finances. The Parties agree that they will take all reasonable steps necessary to maintain the confidentiality of any such information during and after the Term. Failure to comply with any provisions in this Article VII on the part of either Party shall entitle the other Party to equitable remedies in addition to all other remedies at law or under this Agreement.

Institution agrees to maintain the confidentiality of pricing information for 3 years from receipt by Institution, except as required by applicable law, court order, or legal process.
Exclusivity
The Client agrees to sell its Surplus Equipment exclusively to us during the term of this Agreement. In the event that we elect not to purchase specific Surplus Equipment from the Client, Client is free to offer such Equipment for sale to other parties as it, in its sole discretion, deems appropriate.

Intentionally omitted.
Warranties
Warranties

Software is provided “as is” and is exclusive of any warranty, whether express or implied, including without limitation, any warranties of merchantability, fitness for a particular purpose, or non-infringement.

Except as provided for in the Service Level Agreement and documentation attached as Appendix B and incorporated by reference into this contract.
The Firm will use reasonable efforts to ensure the Systems are available during 98% of the Term of this Agreement. Downtimes shall be calculated to exclude outages due to scheduled or emergency maintenance, telecommunications or power disruptions caused by third parties, and any other causes beyond the Firm’s reasonable control.

The Firm will use commercially reasonable efforts to ensure the Systems are available 99.9% of the time. In the event that the Firm fails to meet the Uptime Commitment for any rolling 3 month period, Institution shall receive a refund of the Fees for the impacted System paid during those 3 months.

- 99.8% to 97% Availability: 25% Refund
- 97% to 95% Availability: 50% Refund
- Below 95% Availability: 100% Refund
Consortial Memberships
This Agreement provides the University with membership in the XYZ Consortium and its Membership Program.

This Agreement governs participation by the University in the XYZ Program. The University may terminate this Agreement and participation in XYZ at any time and for any reason. Effective immediately upon such termination, the University shall cease to have any obligation or liability to the Program or any of its member institutions. Under no circumstances shall the University be held liable or responsible for any obligation of the Program, its Parent Company, or any of their respective member institutions.
Termination
Termination

Licensor may terminate this Agreement for breach on written notice to Licensee. In the event of early termination for any reason, Licensee shall not be entitled to any refund of fees paid for the Term of the Agreement. On termination for any reason, the Licensee and its Authorized Users shall cease to use and shall immediately delete or destroy any copies of the Licensed Materials in their possession.

The University may terminate performance of work under the Contract in whole or in part whenever, for any reason, the University shall determine that such termination is in the best interest of the University and/or the State. In the event of alleged breach, Licensor shall promptly notify Licensee in writing and shall provide a cure period of thirty (30) days prior to terminating this Agreement. In the event of early termination, save for material breach by Licensee, Licensee is entitled to a prorated refund of any fees paid.
Terms of Service
Licensor reserves the right to change, modify, add, or remove portions of the Terms of Service at any time. The Licensee's continued use of the Software following the posting of any changes will mean that the Licensee has accepted those changes.

This is when you negotiate a formal signed license and specify that it supersedes any online terms of use, click-through agreements, or end user license agreements for both the client and the users and must include notice and acceptance of changes.
Enforceability
Enforceability

Partners agree to hold the designated items for 15 years from the year of commitment. The Executive Committee will revisit the retention period at least once every five years to determine if circumstances warrant extending or reducing the commitment periods for certain kinds of materials. Retention commitments survive membership.

This Memorandum of Understanding is not a contract or an agreement to enter into a contract. This Memorandum is non-binding to all parties of the Memorandum. No liability may arise from this Memorandum to any parties to the MOU. Should a dispute arise from this MOU the parties should first attempt resolution through the Executive Committee.
Right to Audit
Right to Audit

During the term of this Agreement, and for up to one (1) year after all Fees due hereunder for use of the Materials cease to be incurred by you, upon reasonable notice to you, we and/or our agents or representatives may audit your compliance with this Agreement. During this time, you shall keep and maintain clear, accurate, and complete books and records. In the event that such audit identifies underpayment of five percent (5%) or more, you shall reimburse us for the cost of such audit.

Intentionally omitted.
Data Ownership and Usage

You retain ownership of your Data and hereby grant us a perpetual, worldwide, royalty-free license to use the Data for any business purpose, including but not limited to developing system enhancements and new products.

All Data that you post within the System will continue to be owned by you. We will not sell or disclose any of the Data to third parties or use the Data for any purpose, without your express written permission or in response to a subpoena, court order, or other legal action. If Licensor is compelled by law or court order to disclose any Data, Licensor shall provide the Licensee with adequate prior written notice as soon as practicable, so that Licensee or Authorized Users may seek protective orders or other remedies.
Backups & Security
Backups & Security

We are committed to keeping your data safe and secure and will return your Data to you upon the termination of this Agreement.

We will send you all your Data in an agreed-upon format at no charge upon termination of this Agreement. All copies, including backup copies, of your Data that are hosted by us will be backed up on a continual basis and stored in secure facilities according to industry standards. Backups of your Data will be provided to you in industry-standard formats on a quarterly basis (every third month). All of your Data hosted by us or our subsidiaries or agents will be destroyed within 30 days of the termination of this Agreement and the successful transfer of all your Data to you.
User Privacy
We will not share client information with third parties, except as permitted by our Privacy Policy, which is accepted and agreed to by each Licensed User. We comply with applicable FERPA/HIPAA guidelines.

We will not disclose client information to third parties, without your express permission or as required by law. We may require Licensed Users to accept a click-through agreement; if so, this Agreement will supersede the provisions of any such clickwrap. See Section 5 for our FERPA and HIPAA declarations.
Transfer of Title

PROPERTY
Transfer of Title

Title to Products shall pass to Customer on payment in full.

Title to Products shall pass to Customer on receipt and acceptance by Customer of the Products in agreed-upon condition and working order.
Nondisparagement
Nondisparagement

The Organization retains all rights to prosecute, to the fullest extent of the law, any use of its Works in a manner that falsifies, misrepresents, disparages or fraudulently uses the Works, or disparages or harms the reputation of the Organization.

We reserve the right to terminate this Agreement if we believe in good faith that the conduct of Authorized Users is harmful to our interests, the publications on this site, other subscribers, or other users.

Nothing in this Agreement or any Terms of Service shall be interpreted to diminish the rights and privileges of the Licensee or Authorized Users with regard to intellectual freedom or freedom of speech, including public expressions regarding the Vendor.
Wrapping Up
Answers
questions