AALL PRINCIPLES & PRACTICES

FOR LICENSING ELECTRONIC RESOURCES

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AALL Principles & Practices for Licensing Electronic Resources
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BACKGROUND

In 1997, the American Association of Law Libraries (AALL) joined with five other library associations to draft principles for licensing electronic resources. These principles had the dual purpose of guiding libraries in their negotiations for access to electronic resources and informing vendors and publishers of digital information about the licensing issues important in the library context. In 2004, the *Principles for Licensing Electronic Resources* were revised by a Special Committee appointed by AALL President Carol Avery Nicholson in 2002. The revised *Principles* reflected both the rapidly shifting landscape of digital information and evolving user needs as a result of enhanced technologies. In 2011, AALL President Darcy Kirk appointed a Library Procurement Process Improvements Task Force. This Task Force was directed, in part, to "Update the *Principles for Licensing Electronic Resources*, paying particular attention to new developments in vendor licensing practices and to providing model language for basic licensing provisions." At that time, the title was changed to *Procurement Toolkit and Code of Best Practices for Licensing Electronic Resources* and several appendices were added.

In 2017, another AALL Special Committee was appointed by AALL President Ronald E. Wheeler Jr. to review and update both the *Procurement Toolkit and Code of Best Practices for Licensing Electronic Resources* and the ***AALL Guide to Fair Business Practices for Legal Publishers***. In the years since the initial drafting of this document, the process of licensing electronic resources has become more uniform. Model license agreements and sample clauses developed by several library consortia have gained widespread acceptance and adoption by libraries and information vendors alike. Where once there was little commonality from one vendor's license agreement to the next, today many are strikingly similar. However, licensing electronic resources for libraries remains a complex and legalistic process.

With this most recent installment comes an updated name: *AALL Principles & Practices for Licensing Electronic Resources.* These principles and practices provide guidance to both librarians and vendors engaged in the licensing process. In addition to the principles, the following materials, intended as a toolkit for anyone involved in library procurement, are supplied:

- **Appendix A—Checklist for Licensing Electronic Resources**
- **Appendix B—Resources for Licensing Terms and Definitions**
- **Appendix C—Resources for Sample Clauses and Model License Agreements**
- **Appendix D—Bibliography Licensing and Procurement of Electronic Resources**
- **Appendix E—Bibliography: Accessibility of Electronic Resources**
- **Appendix F—Procurement Process Checklist for Law Libraries**

INTRODUCTION

A license is an agreement ***negotiated*** by the parties involved. Once the parties have agreed to terms, the license is a legal and binding contract between them. A contract is "[A]n agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law." [*Black's Law Dictionary*, 7th edition, 1999.]

License agreements regulating the use of electronic resources govern the relationship between the licensee (the library or user of the content) and the licensor (publisher, vendor, or aggregator of the content). In a typical situation, the licensor will present its standard license agreement to the licensee. This is just the first step in the license negotiation process. Because both parties will be bound by the license terms, each party should review the license carefully and ***be prepared to negotiate*** in good faith to reach a satisfactory agreement. The terms of the final agreement should be committed to in writing, and neither party should rely on verbal agreements or commitments. If the parties cannot agree on key issues in writing, the license should not be signed.

In the area of licensing electronic resources, failure on the part of the licensee to read and understand the terms of the agreement may result in such unintended consequences as:

- the loss of certain rights to uses of the resource that would otherwise be allowed under the law (for example, in the United States, such uses as fair use, interlibrary loan, and other library and educational uses);
- obligations to implement restrictions that are unduly burdensome or create legal risk for the institution;
- sudden termination of the contract due to inappropriate use by a member of the user community;
- unexpected cancellation or renewal notification requirements or automatic renewals and fee increases;
- access restrictions that cannot be supported by your technical or administrative infrastructure.

Given the obligations that a contract creates for an institution and the possible liability associated with not meeting those obligations, in many institutions the authority to sign contracts resides in a specific office or with an officer within the institution (e.g., the purchasing department, legal counsel's or vice president's office, or the library director's office). In some institutions, a library staff member may be delegated the authority to sign license agreements. Library staff will often be responsible for initial review and negotiation of the material terms of the license because they have the most knowledge of the user community and of the licensed resource. Library staff involved in license negotiations should be well informed of the anticipated uses that are essential to their library's user community (e.g., interlibrary loan, downloading, or data mining).

The following principles and practices, along with the appended toolkit materials, are meant to provide guidance to library staff working with others in their own institution and with third-party licensors to reach agreements that respect the rights and obligations of both parties. Library staff engaged in the procurement process should also be familiar with the *AALL Guide to Fair Business Practices for Legal Publishers* and the Committee on Relations with Information Vendors (CRIV) tools.

PRINCIPLES & PRACTICES FOR LICENSING ELECTRONIC RESOURCES

SECTION I—LICENSING PREPAREDNESS

DESCRIPTION: Academic, law firm, and government libraries are all involved in licensing electronic resources. It is the expectation of all parties to a license agreement that negotiations throughout the process be conducted openly and in good faith.

PRACTICE #1: If negotiation, licensing, and procurement are carried out by a department outside the library, representatives of the library should work for clear communication between the departments so that the library's needs are understood and well-represented.

PRACTICE #2: A license is a contractual agreement between the licensor and the licensee for purchase or use of an information resource by the licensee's authorized users. Parties to a license agreement should be familiar with the elements of a legal contract.

PRACTICE #3: All parties should maintain good faith in negotiating a license. It is important to carry out the process as openly as possible to achieve fairness and to develop best practices. A confidentiality or nondisclosure agreement should not be a prerequisite to a license agreement.

PRACTICE COMMENT:

a. The licensor should inform the licensee of the existence of previously purchased products by other departments to avoid possible duplication or redundancy of access within the same organization. For example, in an academic institution, the licensor should tell the licensee that another college has a license for the same product.

PRACTICE #4: Vendors should be open and transparent in their pricing structure and provide accurate and relevant pricing information.

SECTION COMMENTS:

a. A nondisclosure agreement is a contract provision that requires the licensee and/or licensor to refrain from making public certain information, such as terms, price, and access restrictions.

b. Law firm libraries may require a confidentiality or nondisclosure clause intended to protect client information. This is not the type of nondisclosure anticipated by Practice #3 above.

c. Academic, State, Court, and County law libraries may be subject to external disclosure requirements, imposed by state or federal government, and thereby prohibited from entering into nondisclosure agreements.

SECTION II—LICENSE COMPONENTS

DESCRIPTION: From the vendor's perspective, licensing content is the distribution of the vendor's intellectual property to a third party. The distribution of the content is in exchange for a fee. Legally, licensing content requires that the licensor and the licensee agree by contract to each party's rights and obligations, including authorized users, permitted uses, terms of usage, length of access rights, and other terms governing the use of the vendor's content.

A written license agreement, signed by both parties, should represent all negotiated terms and conditions. Agreements should not reference terms and conditions contained in additional documentation, such as terms posted on a website. This practice, known as incorporation by reference, can result in compliance problems for all parties and for authorized users.

PRACTICE #1: A license agreement should be written in clear, non-technical language. Terms that could be ambiguous or subject to interpretation should be defined within the agreement to reflect the parties' intent.

PRACTICE #2: Any amendment or change to the terms of an agreement requires written notice and formal agreement between the parties. The agreement should stipulate how much notice is required and how agreement of the parties will be registered (email, mail, etc.).

PRACTICE #3: A license agreement should clearly and unambiguously identify the particular content that is the subject of the agreement.

PRACTICE #4: A license agreement or appended pricing document should clearly and unambiguously state all costs and fees associated with the acquisition of the content.

PRACTICE #5: A license agreement should state clearly whether the access rights being acquired by the licensee are for permanent use and ownership of the content or are subscription-based access rights only.

PRACTICE #6: A license agreement should state clearly the period of time for which access rights are acquired.

PRACTICE COMMENTS:

- **a.** Short-term license agreements should be considered as a strategy to meet research needs while managing limited fiscal resources.

- **b.** A short-term license agreement could also allow a library to evaluate demand for a product before committing to a long-term contract.

- **c.** A multi-year license agreement should reflect a greater discount or fixed pricing in consideration for the longer term commitment.

PRACTICE #7: Incorporation by reference is discouraged. A license agreement should not reference terms and conditions outside of the written agreement, such as terms posted on a website. If any such terms must be referenced in the license agreement but are not included in their entirety within the contract, they should be carefully reviewed. The referenced outside document should not contain conflicting terms.

PRACTICE #8: Neither party should rely on verbal assurances or understandings. A license agreement, along with any appendices, addendums, or attachments, should comprise the whole of the agreement between the parties. All agreed terms should be incorporated into the written agreement.

PRACTICE #9: A license agreement should not require the licensee to adhere to unspecified terms in a separate agreement between the licensor and a third party, such as a publisher or other copyright holder, unless the terms are fully reiterated in the current license or fully disclosed and agreed to by the licensee.

PRACTICE #10: The terms of the license should be considered fixed at the time the license is signed by both parties. If the terms are subject to change (e.g., scope of coverage, method of access), the agreement should require the licensor or licensee to notify the other party in writing in a timely and reasonable fashion of any such changes before they are implemented, and permit either party to terminate the agreement if the changes are not acceptable.

PRACTICE COMMENT:

- **a.** Appropriate notification by the licensor to the licensee is necessary for any material changes in content, expiration or cancellation of the contract, changes to price, or any other modification for which the library requires notification. The agreement should state both the amount of notice required (30 days, 60 days, etc.) and the method of notice that is acceptable to the parties (written, email, etc.).

PRACTICE #11: Bundling is a marketing strategy that allows the vendor to offer several products and/or formats for sale as one combined product. A license agreement should state the financial relationship, if any, between the electronic resources being licensed and any equivalent publications in other formats.

PRACTICE #12: A license agreement should require the licensor to comply with the Americans with Disabilities Act by supporting assistive software in a manner consistent with best practice guidelines and industry standards. The licensor should also ensure that product maintenance and upgrades are implemented in a manner that does not compromise product accessibility.

SECTION III—AUTHORIZED USE AND AUTHORIZED USERS

DESCRIPTION: The library licenses access to electronic resources on behalf of end users. When negotiating licensing agreements, the licensee should have a complete understanding of who will use the resource and how the end users expect to use the licensed materials. The license terms should reflect all anticipated uses and clearly state any limitations on use of the licensed content. Limitations on use imposed by the licensor should be reasonable and not impede the end user's ability to fully utilize the licensed materials.

PRACTICE #1: The license agreement should clearly identify all classes of anticipated authorized users.

PRACTICE COMMENT:

a. Possible authorized users include students, visiting scholars, faculty (full-time, part-time, adjuncts), staff, alumni, members of the bench and bar, clients, members of the public, interns, summer associates, named attorneys, and attorneys assigned to a particular practice group.

PRACTICE #2: The contracting parties to an agreement should be clearly identified in the agreement as licensee and licensor. Authorized users may or may not be parties to the agreement, depending on the type of library.

PRACTICE COMMENTS:

a. In an academic or public law library, a license agreement should not require authorized users to enter into independent agreements with the licensor through the use of click-through agreements.

b. An agreement should identify the manner in which authorized users will be notified of the license terms.

PRACTICE #3: The licensee should be willing to undertake reasonable and appropriate methods to notify authorized users of the terms of access to a license resource and to enforce those terms. Enforcement of the terms of a license agreement must not violate the privacy and confidentiality of authorized users.

PRACTICE #4: The licensee should be responsible for establishing policies under which authorized users make appropriate use of licensed resources.

PRACTICE #5: A license agreement should not hold the licensee liable for unauthorized uses of the licensed resource by its authorized users, as long as the licensee has implemented reasonable and appropriate methods to notify its user community of use restrictions.

PRACTICE #6: A license agreement should require the licensor to give the licensee notice of any suspected or alleged license violations that come to the attention of the licensor and allow reasonable time for the licensee to investigate and take corrective action, if appropriate.

PRACTICE #7: A license agreement should clearly state the permitted uses of the electronic resource. The licensee should be sure the agreement reflects all anticipated uses, including but not limited to printing, downloading, copying, mobile access, electronic reserves, scholarly sharing, interlibrary loan, inclusion in document management systems, and the development of course packs.

PRACTICE #8: Licensors should agree that occasional and irregular use of limited portions of the licensed materials for inclusion in organization documents, communications to members of the organization or clients, or incorporation into government agency or court filings is permitted.

PRACTICE #9: A license agreement should specify the means of authentication and access to the electronic content available to authorized users.

PRACTICE #10: A license agreement should not require the use of an authentication system that creates an unnecessary barrier to access by authorized users.

PRACTICE #11: A license agreement should recognize the affiliation of authorized users within a given library or institution, regardless of users' physical location, and should allow for routine remote access to licensed electronic information resources.

SECTION COMMENTS:

- **a.** It is desired that if a vendor provides mobile access:
  - **i.** Mobile users will have the same rights of access to content as non-mobile users;
  - **ii.** Content will be compatible across platforms;
  - **iii.** Where content is licensed for a specific number of seats/users, a single user accessing content on multiple platforms should be counted as one seat/user.

SECTION IV—COPYRIGHT AND INTELLECTUAL PROPERTY

DESCRIPTION: As information technology evolves, the laws governing intellectual property change to keep pace. Licensees must be aware of their organization's rights and obligations under current copyright law.

PRACTICE #1: A license agreement should recognize and not restrict, abrogate or circumvent the rights of the licensee or its user community permitted under copyright law, including but not limited to the fair use provisions of Section 107 of the U.S. Copyright Act (17 U.S.C. 107) and the interlibrary loan provisions of Section 108 of the U.S. Copyright Act (17 U.S.C. 108).

PRACTICE #2: A license agreement should support the practice of Interlibrary Loan (ILL) of digital resources. Using electronic, paper, or intermediated means, licensee may fulfill ILL requests from other institutions. Licensee agrees to fulfill such requests in compliance with Section 108 of the U.S. Copyright Act (17 U.S.C. 108).

PRACTICE #3: A license agreement should not limit the rights of the licensee to use public domain content in any way, even when such content is included as part of the licensor's proprietary resource.

PRACTICE #4: A license agreement should recognize the intellectual property rights of the licensee, the licensor, and any relevant third party.

PRACTICE #5: A license agreement should require the licensor to defend, indemnify, and hold the licensee harmless from any action based on a claim that use of the resource in accordance with the license infringes any patent, copyright, trademark, or trade secret of any third party.

PRACTICE #6: A license agreement should recognize and accommodate reasonable and appropriate uses in an academic environment, including but not limited to electronic reserves, course packs, scholarly sharing, institutional archiving, text and data mining for academic research, and copies made for classroom teaching.

SECTION COMMENTS:

a. Law Firms that make filings at the U.S. Patent and Trademark Office (USPTO) that contain copyrighted material should consult the USPTO General Counsel's Memorandum of January 19, 2012, "USPTO Position on Fair Use of Copies of NPL Made in Patent Examination," for guidance on the payment of copyright fees.

SECTION V—ARCHIVING

DESCRIPTION: Libraries provide both current and historical information for their users, and recognize a professional responsibility to preserve information for future generations. Information provided in a digital format presents unique challenges for preservation. A license agreement should address the issues related to long-term storage and access of the licensed materials.

PRACTICE #1: When permanent use of a resource has been licensed, the licensor should provide a usable archival copy of the licensed content, including any necessary interface. The license should specify the delivery format of the archival copy, and the conditions under which the licensee may access or refer users to the archival copy.

PRACTICE #2: When subscription-based or renewable use of a resource has been licensed, a license agreement should specify what, if any, access to the licensed material would continue to be available after the subscription period lapses.

PRACTICE #3: A license agreement should authorize the licensee to hold an archival copy of the licensed materials, to be maintained as a backup or archival copy during the entire term of the agreement. Such copy may be provided by the licensor or created by the licensee.

PRACTICE #4: A license agreement should specify who has permanent archival responsibility for the licensed content.

SECTION COMMENTS:

a. Many factors can impact the uninterrupted delivery of electronic data. Systems can fail; vendors can fold, merge, or get acquired; and data can erode. For critical data, a library should have archival rights.

b. In intellectual property, product liability and other cases, access to content as it existed on key dates can have an economic value. In the same way that a patron would use a previous version of a book to establish liability of a current entity, archived versions of electronic content can be a critical part of fact finding.

c. A third party may be designated to maintain a permanent archival copy.

SECTION VI—USAGE TRACKING AND USER PRIVACY

DESCRIPTION: Protecting the confidentiality of users is a major tenet of librarianship. Usage statistics are an important metric in collection development decisions. Usage details also aid law firms in cost management and recovery. Statistics can assist both licensees and licensors in evaluating demand and negotiating acceptable terms. However, the tracking, collection, and storage of user data by information vendors is of concern to library professionals because of the importance of protecting the privacy of users as well as their research products.

The laws and regulations of all relevant jurisdictions should guide licenses that cover multiple branches or user types. Agreements should require that information about research activity linked to individual users remain confidential. To cover the risk of a data compromise or breach, licensees may wish to include contract language specifically relating to indemnification.

PRACTICE #1: A license agreement should describe the usage statistics collected or generated by the licensor or any third parties as well as the means available for the licensee or its designee to access those statistics.

PRACTICE #2: The routine collection of use data by either party to a license agreement should be predicated upon disclosure of such collection activities to the other party and must respect laws and institutional policies regarding confidentiality and privacy.

PRACTICE #3: Information providers should not collect or store user-specific usage information.

SECTION COMMENTS:

a. Usage statistics aid both the licensee and licensor in maximizing the use of resources.

i. Low usage may suggest any of the following: demand for the content is low, resource is not easily discoverable, interface may not be user-friendly, marketing efforts of either licensee or licensor may need attention, or additional training may be required.

ii. High usage may suggest any of the following: excellent content, institutional preference or product popularity, or false positives generated by federated search tools.

iii. Usage statistics alone are insufficient to determine the value of a resource to a subscribing library. Statistics that seem either too high or too low require further investigation.

b. Licensors should strive to provide usage statistics that are COUNTER or SUSHI compliant usage statistics.

c. Law libraries may also track metrics through third party resources such as Priory Solutions Research Monitor, or Lucidea's Lookup Precision. Licensors should still provide usage statistics.

d. Law libraries and vendors can partner together to make better use of resources by using aggregated usage data. Training for resources can be adapted based on usage data as well.

SECTION VII—TERMINATION/RENEWAL

DESCRIPTION: A license agreement will carry a specific expiration date. In the event that all parties carry out their rights and obligations accordingly, the license will terminate on that date. The parties are then free to renegotiate. An agreement might also contain an automatic renewal clause. This sets forth the terms under which the original agreement will remain in place after the initial term expires, without further negotiation. An agreement should also anticipate other circumstances under which termination of the agreement could occur, including a breach by either party.

PRACTICE #1: A license agreement should clearly state the terms and conditions for renewal and termination.

PRACTICE #2: A license agreement should provide termination and/or renewal rights that are acceptable to each party.

PRACTICE #3: A license agreement should clearly identify the acts that constitute a breach, as well as the remedies available to the parties in the event of a breach.

PRACTICE #4: A license agreement should specify the financial obligations of both parties in the event that either party terminates the license.

PRACTICE #5: Automatic renewal should not be assumed in the absence of specific licensing language.

SECTION COMMENTS:

a. The parties should consider including an escape clause provision. An escape clause may be needed if significant changes occur within an organization, such as a material change in budget, revenues/appropriations, head-count/FTE, or mission shift or merger of either party. The agreement should clearly define what constitutes a material change.

b. Automatic renewals may create efficiencies and streamline some work processes. However, the agreement should clearly define the terms for the parties to invoke or reject an automatic renewal.

SECTION VIII—DISPUTE RESOLUTION

DESCRIPTION: Parties to a license agreement who have a conflict resulting from their agreement may wish to choose alternative dispute resolution before litigation.

PRACTICE #1: A license agreement should allow for the use of alternative dispute resolution to resolve any conflicts that may arise in relationship to the agreement.

PRACTICE #2: A license agreement should stipulate the rights and obligations of the parties in the event of a dispute.

PRACTICE #3: A license agreement should state the choice of law and choice of venue by which the parties will be governed in the event of a dispute.

SECTION COMMENTS:

a. The agreement should specify how an arbitrator or referee will be selected and the party responsible for fees.

b. If the parties are not able to agree on choice of law and/or choice of venue, one strategy is for the agreement to remain silent on these issues. In the event of a dispute, these issues would be resolved in the course of litigation.

c. Academic, public, and government libraries often have dispute resolution terms that are dictated by statute or regulation.

SECTION IX—WARRANTIES/QUALITY OF SERVICE

DESCRIPTION: A warranty provides assurance that a fact upon which a party relies is true, so that the relying party does not have to discover that fact for himself. A party that grants a warranty effectively indemnifies the other party from harm or loss if the warranty is not honored. A license agreement might also contain warranty disclaimers or limitations.

PRACTICE #1: A license agreement should state the warranties extended by the licensor to the licensee with respect to the licensed content.

PRACTICE #2: A license agreement should state the limitations on warranties between the licensee and licensor.

PRACTICE #3: A license agreement should state the terms of compensation between licensee and licensor in the event that the warranty is not met or the quality of service falls below reasonable standards.

APPENDIX A: CHECKLISTS FOR LICENSING ELECTRONIC RESOURCES

LICENSING PREPAREDNESS

- ☐ The library has identified the individual(s) with the authority to negotiate/review the license agreement.
- ☐ The library has identified/defined all authorized users for the resource.
- ☐ The library has defined the required or acceptable uses for the resource.
- ☐ The library has identified/defined the non-negotiable requirements in the contract (e.g., non-disclosure agreement, state/federal law requirements, etc.)

LICENSE COMPONENTS

- ☐ The license is written in clear, non-technical language. If not, consider requesting a revised license.
- ☐ The license clearly identifies the content subject to the agreement.
- ☐ The licensee has identified/defined all non-negotiable terms of the license.
- ☐ Any external documents or terms referenced within the license agreement have been clearly identified and made available to the licensee.
- ☐ The license clearly states access rights of the licensee as either permanent ownership or subscription-based rights.
- ☐ The license clearly states the time period for access rights.
- ☐ The license allows for an appropriate length of time for notification by the vendor of any changes to content, price, the expiration of the contract, etc.
- ☐ The license clearly states that the licensor shall communicate any changes to the terms and conditions in writing, and that any such changes are subject to acceptance by the licensee. Use of a resource does not constitute acceptance of any revised terms.
- ☐ The license clearly states that licensed resources comply with the Americans with Disabilities Act by supporting assistive software in a manner consistent with best practice guidelines and industry standards.

AUTHORIZED USE AND AUTHORIZED USERS

- ☐ The license agreement identifies all classes/types of authorized users.
- ☐ The license reflects that authorized users are governed by the terms of the license, but are not parties to the agreement.
- ☐ The terms of the license do not violate the privacy and confidentiality of authorized users.
- ☐ The license clearly states policies under which authorized users can make appropriate use of licensed resources.
- ☐ The license does not hold the licensee liable for unauthorized use of the licensed resource by its users as long as the licensee acts in good faith to uphold the terms of the license.
- ☐ The license requires the licensor to give the licensee notice of any alleged license violation, and reasonable time for investigation and to correct the violation.
- ☐ The license clearly states the permitted uses of the licensed resource.
- ☐ The license specifies the means of authentication and access to the licensed content.
- ☐ The license allows for remote access to licensed content by the affiliation of users within a library or institution.

COPYRIGHT AND INTELLECTUAL PROPERTY

- ☐ The license agreement recognizes and does not restrict, abrogate or circumvent the rights of the licensee or its authorized users permitted under copyright law, including but not limited to the fair use provisions of Section 107 of the U.S. Copyright (17 U.S.C. 107) and the interlibrary loan provisions of Section 108 of the U.S. Copyright Act (17 U.S.C. 108).
- ☐ The license supports the practice of Interlibrary Loan (ILL) of the licensed content.
- ☐ The license does not limit the use of public domain content.
- ☐ The license recognizes the intellectual property rights of the licensee, the licensor, and any relevant third party.
- ☐ The license requires the licensor to defend, indemnify, and hold the licensee harmless from any action based on a claim that the use of the licensed content infringes any patent, copyright, trademark, or trade secret of a third party.
- ☐ The license recognizes and accommodates academic uses, including but not limited to electronic reserves, course packs, scholarly sharing, institutional archiving, text and data mining for research purposes, and copies made for classroom teaching.

ARCHIVING

- ☐ Permanent use of a licensed resource:
  - ☐ The license requires the licensor to provide a usable archival copy of the licensed content.
  - ☐ The license specifies the delivery format of the archival copy of licensed content.
- ☐ Subscription-based or renewal use of a licensed resource:
  - ☐ The license specifies what licensed content will continue to be available after the subscription period ends.
- ☐ The license authorizes the licensee to hold an archival copy of the licensed content as a backup during the length of the agreement.
- ☐ The license specifies who has permanent archival responsibility for the licensed content.

USAGE TRACKING AND USER PRIVACY

- ☐ The license clearly defines what usage statistics are needed and in what format by the licensee.
- ☐ The license specifies the type of statistics collected, how often statistics are collected, and how they are accessible by the licensee.

TERMINATION/RENEWAL

- ☐ The license clearly states the terms and conditions for renewal and termination.
- ☐ The license clearly identifies the acts that constitute a breach of contract, and the remedies available to all parties.
- ☐ The license clearly states whether the license will be automatically renewed unless the licensor has been notified within a specified number of days prior to the end of the agreement.

DISPUTE RESOLUTION

- ☐ The license allows for the use of alternative dispute resolution to resolve any conflicts.
- ☐ The license clearly states the rights and obligations of all parties with respect to dispute resolution.
- ☐ The license states the choice of law and choice of venue by which all parties will be governed or remains silent and is resolved in the course of litigation.

WARRANTIES/QUALITY OF SERVICE

- ☐ The limitations on warranties extended in the license are acceptable to the licensee.
- ☐ The terms of compensation offered in the license in the event that the licensed material is unavailable are acceptable to the licensee.
- ☐ Institutional requirements of all warranty provisions or disclaimers are included in the license.

APPENDIX B: RESOURCES FOR LICENSING TERMS AND DEFINITIONS

WEBSITES

- **Serials Acquisitions Glossary**, ALA Association for Library Collections & Technical Services
- **LIBLICENSE Licensing Vocabulary**, Center for Research Libraries
  - **Descriptions of terms and sample clauses**

BOOKS

- Lipinski, Tomas A. "A Basic Licensing Glossary," in *The Librarian's Legal Companion for Licensing Information Resources and Services*, 397-513. Chicago: Neal-Schuman, 2013.

APPENDIX C: RESOURCES FOR SAMPLE CLAUSES AND MODEL LICENSE AGREEMENTS

WEBSITES

- Big Ten Academic Alliance—**Standard language for select topics for inclusion in agreements** between vendors and member libraries.
- California Digital Library (CDL)—**comprehensive database of agreements** to which they are or have been a party, including **confidential license agreements** have been redacted. This is a great source of sample language, definitions, and clauses for librarians involved in licensing. The agreements cover hundreds of different resources from a wide range of providers and range from a single page to more than 30 pages.
- Center for Research Libraries—Launched in 1997, LIBLICENSE offers licensing terms and descriptions with **sample language** and a good **glossary of licensing terms**.
- NELLCO Law Library Consortium—**Standard License Agreement 2017**
- National Information Standards Organization—**SERU: A Shared Electronic Resource Understanding**. A recommended practice of the National Information Standards Organization, NISO RP-7-2012 (Baltimore, MD: National Information Standards Organization, 2012).
- NorthEast Research Libraries Consortium (NERL)—**Model License**
- Ontario Council of University Libraries (OCUL)—**Model Licenses for Electronic Books; Local Archiving and Hosting; and Electronic Journals and Databases License**, updated periodically.
- Ringgold, Inc.—maintains a **set of public domain model licenses with commentary**. The site includes six unique agreements by institution type:
  - Single Academic Institution License
  - Academic Consortia License
  - Public Libraries License
  - Corporate and other Special Libraries License
  - E-book (and journal archive purchase) License
  - 30/60 Day Free Trial License

BOOKS

- Lipinski, Tomas A. "Twenty Sample Key Clauses to Look for in Content Licenses," in *The Librarian's Legal Companion for Licensing Information Resources and Services*, 635-644. Chicago: Neal-Schuman, 2013.

APPENDIX D: BIBLIOGRAPHY—LICENSING AND PROCUREMENT OF ELECTRONIC RESOURCES

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- **Deal or No Deal Licensing and Acquiring Digital Resources: License Negotiations**, LLRX.com
- **Deal or No Deal Licensing and Acquiring Digital Resources: Deal Breaking License Clauses**, LLRX.com
- **SERU: Shared Electronic Resource Understanding**, National Information Standards Organization (NISO)
- **Subject Matter and Scope of Copyright**, Copyright Law of the United States, U.S. Copyright Office
- **USPTO Position on Fair Use of Copies of NPL Made in Patent Examination**, Office of the General Counsel, U.S. Patent and Trademark Office
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APPENDIX E: BIBLIOGRAPHY—ACCESSIBILITY OF ELECTRONIC RESOURCES

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- **Model Licensing: Accessibility**, Association of Research Libraries
- **Web Content Accessibility Guidelines (WCAG) Overview**, Web Accessibility Initiative

APPENDIX F: PROCUREMENT PROCESS CHECKLIST FOR LAW LIBRARIES

- ☐ Identify an information need
- ☐ Investigate market and evaluate competing products
- ☐ Check with consortia
- ☐ Establish trial(s)
- ☐ Enter resource(s) into ERM process/workflow
- ☐ Market to potential users during trial period
- ☐ Make acquisition decision at close of trial(s)
- ☐ Consider whether resource lends itself to Shared Electronic Resources Understanding (SERU) alternative to licensing
- ☐ Negotiate license agreement (see **Appendix A: Checklists for Licensing Electronic Resources**)
- ☐ Market and promote resource to users
- ☐ Monitor ongoing access and use
- ☐ Evaluate return on investment
- ☐ Renew or renegotiate term

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