



Library Initiatives Standardized Agreement Language

Introduction

The Big Ten Academic Alliance has developed this document to facilitate negotiations on behalf of its member libraries which require license agreements. While many of our member libraries have developed their own licensing guidelines, this document incorporates language that maybe unique to consortial licensing. This document addresses select topics of particular importance to Big Ten libraries commonly included in licenses. Vendors, publishers, and content providers should incorporate this language into draft or final agreements for the BTAA.

1. Preamble Language

The Big Ten Academic Alliance is an Illinois not-for-profit corporation located at 1819 South Neil Street, Suite D, Champaign, Illinois 61820.

2. Authorized User

- a. The Licensee's full-time and part time students, including distance learners, regardless of their physical location;
- b. The Licensee's fulltime and part-time employees (including faculty, staff, affiliated researchers and independent contractors), regardless of their physical location; and
- c. Patrons not affiliated with Licensee who are physically present at Licensee's site(s)
- d. If the licensee has one or more remote sites or campuses which are administered centrally by the licensee's site or campus, persons affiliated with those remote sites or campuses will also be considered authorized users.
- e. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by Licensee to Licensor. The use of proxy servers is permitted as long as any proxy server IP addresses provided limit remote or off-campus access to Authorized Users.

3. Governing Law

This Agreement shall be construed under, and the performance governed by, the laws of the State of Illinois without regard to principals governing conflict of laws.

4. Indemnification

Illinois law provides for contribution among joint tortfeasors whereby each liable party pays its share of damages based on comparative fault. Any liability of the Big Ten Academic Alliance will be subject to the terms of the Big Ten Academic Alliance's insurance policy. The Licensor shall indemnify and hold Licensee and Authorized Users harmless for any losses, claims, damages, awards, penalties, or injuries incurred, including reasonable attorney's fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the use of the Licensed Materials by



the Licensee or any Authorized User. Additionally, Licensor agrees that no liability limitation that may appear elsewhere in this Agreement applies to, overrides, or cancels this indemnification.

5. Limitation of Liability

Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Licensed Materials.

6. Fiscal Exigency/Failure to Appropriate Funds

Participating members may terminate their participation in the agreement if sufficient funds are not made available by their respective state legislatures or institutional budget processes for the purpose of this program.

7. Price Increases

Licensor shall provide Licensee with a price list for all Licensed Materials no less than sixty (60) days prior to end of the current term.

8. Cancellation Notice Period

If the Licensor and the Licensee are unable to agree in advance upon the length of and fees for any renewal term, either party may terminate this Contract prior to the commencement of any renewal term.

9. Confidentiality

Licensor agrees to maintain the confidentiality of any data relating to the usage of the Licensed Materials by any Participating Member Institution and its Authorized Users. Participating Member Institution agrees to maintain the confidentiality of any data relating to the usage of the Licensed Materials by individual Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party.

Licensee and Licensor shall cooperate in the implementation of security and control protocols and procedures as they are developed during the term of this Agreement.

10. Digital Rights Management Technology

In the event that Licensor utilizes any type of digital rights management technology to control access to or the usage of the Licensed Materials, Licensor agrees to notify Licensee of the name, contact information and any technical specifications for the digital rights management technology utilized.

11. Disabilities Compliance

Licensor shall comply with the Americans with Disabilities Act (ADA), by supporting assistive software or devices such as large print interfaces, text-to-speech output, voice-activated input, refreshable braille displays, and alternate keyboard or pointer interfaces, in a manner consistent with the Web Accessibility Initiative Web Content Accessibility Guidelines 2.0 AA (<http://www.w3.org/WAI/guid-tech.html>). Licensor shall ensure that product maintenance and upgrades are implemented in a manner that does not compromise product accessibility.

Licensors shall provide to Licensee a current, accurate completed Voluntary Product Accessibility Template (VPAT) to demonstrate compliance with the federal Section 508 standards (<http://www.state.gov/m/irm/impact/126343.htm>). If the product does not comply, the Licensor shall adapt the Licensed Materials in a timely manner and at no cost to the Licensee in order to comply with applicable law.

12. Institutional Repository Deposit

Big Ten libraries will download or otherwise receive from publisher PDF versions of articles written by their corresponding university faculty or students, including those co-authored with researchers from other institutions, and make them available in a public section of an institutional repository service. These downloads will include accompanying metadata to facilitate organization and access.

Future downloads, for the purpose of keeping the holdings of BTAA-authored papers current, will happen on a scheduled basis to be mutually agreed upon.

Member libraries will be allowed to make these articles available from its institutional repository service in perpetuity.

13. Notice of Click-Through License Terms or Other Means of Passive Assent

In the event that Licensor requires Authorized Users to agree to terms relating to the use of the Licensed Materials before permitting Authorized Users to gain access to the Licensed Materials (commonly referred to as "click-through" licenses), or otherwise attempts to impose such terms on Authorized Users through mere use or viewing of the Authorized Materials, Licensor shall provide Licensee with notice of and an opportunity to comment on such terms prior to their implementation. In no event shall such terms materially differ from the provisions of this Agreement. In the event of any conflict between such terms and this Agreement, the terms of this Agreement shall prevail.

14. Open Access Option

In the event that Licensor offers an open access option to its authors, Licensor agrees to annually review the number of open access articles published in the Licensed Materials under the open access option. For all Licensed Materials in which such articles are published, Licensor will share with Licensee the number of articles published under the open access option by all authors, and number of articles and citations by authors at Licensee's institution, listed by journal title. Licensor will enter into good faith discussions with Licensee concerning mechanisms by which open access publication fees can offset the subscription fees paid by Licensee and other subscribers of Licensed Materials, with a goal of reducing subscription fees in proportion to the revenue received through such open access publication fees.

15. Authorized Uses

The Licensee and the Authorized Users may access or use the Licensed Materials in ways that are consistent with this Agreement's terms and conditions and the Fair Use Provision of United States copyright law and international law. Additionally, the Licensee and Authorized Users may access or use the Licensed Materials for the following purposes:

- a. **Electronic Reserves.** Licensee and Authorized Users may use a reasonable portion of the Licensed Materials for use in connection with specific courses of instruction offered

by Licensee or its parent institution.

- b. Education and Teaching. Licensee and Authorized Users may extract or use information contained in the database for educational, scientific, or research purposes, including extraction and manipulation of information or images for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis.
- c. Course Management Systems. Licensee may incorporate parts of the Licensed Material in electronic course management systems for the use of Authorized Users in the course of instruction. Each such item shall carry appropriate acknowledgement of the source, listing title and author of extract, title and author of work, and publisher. Copies of such items shall be deleted by the Licensee when they are no longer required for such purpose.
- d. Electronic Links. Licensee may provide password- or proxy-protected hyperlinks from the Licensor's Web page(s) or Web site(s) to the Licensed Materials. Licensee may make reasonable changes in the appearance of such links, or in statements accompanying such links as Licensor reasonably requests such changes.
- e. Caching. Licensee and Authorized Users may make such local digital copies of the Licensed Materials as are necessary to ensure efficient use by Authorized Users by appropriate browser or other software.
- f. Scholarly Sharing. Authorized Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Materials for personal, scholarly, educational, scientific, or research uses. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Materials in the Authorized User's own scientific, scholarly and educational works. Licensee is not permitted to resell such information for any purpose, under any circumstances.
- g. Interlibrary Loan. Using electronic, paper, or intermediated means, Licensee may fulfill occasional requests from other non participating institutions, a practice commonly called Inter-Library Loan. Customer agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC §108, "Limitations on exclusive rights: Reproduction by libraries and archives") and the Guidelines for the Proviso of Subsection 108(2g)(2) prepared by the National Commission on New Technological Uses of Copyrighted Works (CONTU).
- h. Text Mining. Authorized Users may use the licensed material to perform and engage in text mining/data mining activities for academic research, scholarship and other educational purposes, and to utilize and share the outputs of text and data mining in their scholarly work. Licensor will cooperate with Licensee and Authorized Users in making the Licensed Materials available in a manner and form most useful to the Authorized User. Any Licensor fees for provision of copies will be on a time and materials basis only.

16. Breach cure period

In the event of a breach of any of its obligations under this Agreement, Licensee shall have the right to remedy the breach within thirty (30) days upon receipt of written notice from Licensor. Within the period of such notice Licensee shall make every reasonable effort and document said effort to remedy such a breach and shall institute any reasonable procedures to prevent future occurrences of such breaches. If a Licensee fails to remedy such a breach within the period of thirty (30) days, Licensor may (at its option) terminate this Agreement upon written notice to the Licensee.

If Licensor becomes aware of a material breach of the rights granted Licensee under the Agreement that Licensor reasonably believes will cause immediate and severe economic injury, Licensor will notify the Licensee immediately in writing and shall have the right to temporarily suspend the Licensee's access to the product. Licensee shall have the right to remedy the breach within thirty (30) days, upon receipt of written notice from Licensor. Once the breach has been remedied or the breaching activity halted, Licensor will immediately reinstate access to the product. If the Licensee does not satisfactorily remedy the breaching activity within thirty (30) days, Licensor may terminate this Agreement upon written notice to the Licensee.

In the event of such termination, Licensee shall receive a prorated refund of any subscription fees paid to date of termination.

In the event of a breach of this Agreement by Licensor, which breach is not remedied within thirty (30) days notice by Licensee that such breach has occurred, Licensee reserves the right to terminate this Agreement. At that time, Licensor shall immediately refund the license fee pro-rated to the term of the subscription.

Should a significant portion of the Product be deleted or removed from access, Licensor will notify Licensee immediately. Licensee will have at least ten (10) days from receipt of notification to cancel the Agreement and request a pro-rated refund of the license fee.

17. Assignment and Transfer

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party. Neither party to this Agreement may unreasonably withhold or delay such written consent.

18. Transfer of Titles

If any portion of the Licensed Materials are transferred to or acquired from another party, Licensor shall use best efforts to ensure that Licensee does not lose access to content as a result of the transfer or acquisition and that any archival and perpetual access rights that have been granted shall be honored whether the Licensor is acting as the transferring or acquiring party. Licensor agrees to communicate with the other party to exchange such relevant payment and rights information. For journal titles, Licensor will use best efforts to comply with the Transfer Code of Practice. [<http://www.uksg.org/transfer>]

19. Notices

Licensor shall notify the licensee in writing of any changes to the content, design and delivery of the licensed content, and of any changes to the Terms and Conditions of this service.

20. Post Cancellation Access/Perpetual Access

- a. Except for termination for cause, Licensor hereby grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that the Licensee subscribed to during Agreement's duration. 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. Licensor may allow a third party to provide continued access to the Licensed Materials without additional expenditures by the Licensee.



- b. The Licensor shall allow the Licensee to participate in the archiving of one complete copy of the Licensed Materials, and to use such archived Licensed Materials in the event the Licensor discontinues or suspends selling or licensing the Licensed Materials. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. Licensed Materials may be made available to any Big Ten Library participants who indicate a right to those Licensed Materials.
- c. Licensor acknowledges that Licensee may engage the services of third-party trusted archives and/or participate in collaborative archiving endeavors to exercise Licensee's rights under this Agreement. Licensee agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the Licensed Materials available for archiving purposes. Licensee may perpetually use the third-party trusted system to access or store the Licensed Materials, so long as Licensee's use is otherwise consistent with this Agreement.

21. Signature Block

The signature block for and Big Ten Academic Alliance legal agreement will read:

BIG TEN ACADEMIC ALLIANCE

Barbara McFadden Allen, Executive Director

Date

November 2016