



SCELC Contract Points

This text provides examples of agreeable license content that SCELC looks for when negotiating license agreements.

Model licenses from <http://www.library.yale.edu/NERLpublic/licensingprinciples.html> and <http://www.cdlib.org/vendors/#licensing> were used as sources.

bold = essential section

italic = clause to watch for

I. Authorized Users

- a. **Persons Affiliated with Consortium Institutions.** Full and part time students and employees (including faculty, staff, administrators, affiliated researchers and independent contractors) and other valid ID holders of Consortium Institution and its member institutions, regardless of the physical location of such persons.
- b. **Walk-ins.** Patrons not affiliated with Consortium institution who are physically present at Consortium institution's site(s) ("walk-ins").

II. Authentication

IP Addresses. Authorized Users shall be identified and authenticated by the use of Internet Protocol ("IP") addresses provided by Consortium 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.

III. Authorized Use

- a. Consortium institution and Authorized Users may make all use of the Licensed Materials as is consistent with the Fair Use Provisions of United States and international copyright laws.
- b. **The Licensed Materials may be used by Authorized Users who may display, print, electronically copy, or email reasonable portions of the Licensed Materials.**
- c. Interlibrary Loan. Using secure electronic, paper, or intermediated means such as Ariel, Consortium institution may fulfill occasional requests from other institutions, a practice commonly called Interlibrary Loan. Consortium institution 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.
- d. Course Reserves (Print and Electronic). Consortium institution and Authorized Users may use a reasonable portion of the Licensed Materials for use in

connection with specific courses of instruction offered by Consortium institution and/or its member institutions.

- e. Course Packs. Consortium institution and Authorized Users may use a reasonable portion of the Licensed Materials in the preparation of Course Packs or other educational materials

IV. Licensor Performance Obligations

- a. Quality of Service. Licensor shall use reasonable efforts to provide continuous service seven (7) days a week with an average of 98% up-time per month. The 2% down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor. If the Licensed Materials fail to operate in conformance with the terms of this Agreement, Consortium shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Consortium in an amount that the nonconformity is proportional to the total Fees owed by Consortium under this Agreement or extend the license term by the same time as the nonconformity occurred.
- b. Usage Data. Licensor shall provide to each Consortium Institution statistics regarding their individual institution's usage of the Licensed Materials by its Authorized Users, and shall provide to the Consortium Consortia-wide statistics in conformance with the Codes of Practice for Project COUNTER located at: http://www.projectcounter.org/code_practice.html
- c. **Compliance with Americans with Disabilities Act.** Licensor shall comply with the Americans with Disabilities Act (ADA), by supporting assistive software or devices such as large print interfaces, voice-activated input, and alternate keyboard or pointer interfaces in a manner consistent with the Web Content Accessibility Guidelines published by the World Wide Web Consortium's Web Accessibility Initiative, which may be found at: <http://www.w3.org/WAI/GL/#Pubs>
- d. **Training and Support.** Licensor will provide appropriate training to Consortium institutions' staff relating to the use of the Licensed Materials and any Licensor software. Licensor will offer reasonable levels of continuing support to assist Consortium institutions and Authorized Users in use of the Licensed Materials. **Licensor will make its personnel available by email, phone or fax during regular business hours, Monday through Friday, Pacific Time, for feedback, problem-solving, or general questions.**
- e. Notification of Modifications of Licensed Materials. Licensor shall give a ninety (90) day notice of any such changes to Consortium institutions. If any such modification renders the Licensed Materials less useful to Consortium institutions or its Authorized Users, Licensor shall reimburse Consortium in an amount that

the withdrawal is proportional to the total Fees owed by Consortium under this Agreement.

- f. Completeness of Content. Where applicable, Licensor will inform Consortium of instances where online content differs from the print versions of the Licensed Materials. Where applicable, Licensor shall use reasonable efforts to ensure that the online content is at least as complete as print versions of the Licensed Materials, represents complete, accurate and timely replications of the corresponding content contained within the print versions of such Materials, will cooperate with Consortium to identify and correct errors or omissions, and shall make available the electronic copy of the Licensed Materials no later than the date on which the paper version is issued.
- g. Persistent Links. Where applicable, Licensor will provide and maintain persistent links to individual items within the Licensed Materials and make these available to Consortium institutions. Licensor's support for persistent linking shall include the ability to resolve in-bound and out-bound links using the OpenURL standard (ANSI/NISO Z39.88).
- h. Title List. Where applicable, Licensor will provide and maintain a list of titles included along with ISSN/ISBNs, volumes, issues, and dates
- i. MARC records. Licensor will provide information about the availability, cost, and maintenance method of MARC records.
- j. Archival/Backup Copy. Licensor will provide or grant Consortium institutions with permission to make one (1) Archival/Backup Copy in a mutually-acceptable format of any Licensed Materials to fulfill Consortium institutions' rights under Section XIX, "Perpetual License", of this Agreement. Either party may engage the services of third-party trusted archives and/or participate in collaborative archiving endeavors to fulfill the requirements of this provision. Consortium institutions agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the Licensed Materials available for archiving purposes.

V. Consortium Performance Obligations

- a. Provision of Notice of License Terms to Authorized Users. Consortium institutions shall make reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement. [this should allow posting of summary terms in ERMS]
- b. Protection from Unauthorized Use. Consortium institutions shall implement reasonable procedures to restrict access to the Licensed Materials to Authorized Users.
- c. ***[Indefensible performance terms. Eliminate any indefensible performance terms such as "ensure" use "best efforts" employ "all means available" or "warrant" or "guarantee" Consortium's performance. Consortium's level of performance shall be "reasonable".]***

VI. Mutual Performance Obligations

- a. Confidentiality of User Data. Licensor agrees to maintain the confidentiality of any data relating to the usage of the Licensed Materials by any Consortium institution and its Authorized Users.
- b. Unauthorized Use Cure Activities. In the event of any unauthorized use of the Licensed Materials by an Authorized User, Consortium institution and Licensor will notify the other party, and cooperate to investigate and terminate access to that Authorized User. Consortium institution and Licensor will work together to avoid recurrence of any unauthorized use. If after sixty (60) days from the original notification the unauthorized use has not been cured, Licensor may terminate this License. ***[eliminate clauses that say any breach or unauthorized use causes irreparable harm to the Licensor, or says that unauthorized use is the sole responsibility of the Consortium; or says that the Consortium agrees to pay liquidated damages for the Licensor's injunctive relief]***

VII. Early Termination

In the event of early termination permitted by this Agreement, Licensor shall refund a pro-rata portion of the fees paid by Consortium for any remaining period of the Agreement from the date of termination.

VIII. System Requirements

[Licensor shall describe the system requirements for use of the Licensed Materials, which shall include names and versions of browsers and the necessary plug-ins.]

IX. Term

[Term shall be stated.]

X. Renewal

- a. *[Renewal Notices should be issued 120 days in advance of expiration.]*
- b. *[Opt-in renewal; no automatic renewal.]*

XI. Fees

- a. *[Price model should be stated and include the basis of charging: (simultaneous user {unlimited preferred}, FTE, by institution or site, Carnegie classification, number of participants).]*
- b. *[Subsequent year price increases should be limited to no more than 5%.]*
- c. *[Discounts for consortial purchase or centralized billing should be stated.]*
- d. *[Payments should not be due less than thirty (30) days after receipt of invoice.]*
- e. *[Invoices should be received 45 days prior to the term end to prevent loss of service.]*

XII. Copyright and Property Right Infringement

The Licensor shall indemnify and hold Consortium institutions 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 Consortium institutions or any Authorized User in accordance with the terms of this Agreement. This indemnity shall survive the termination of this agreement.

XIII. Limitations on Warranties

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.

XIV. Force Majeure

[Any Force Majeure statement shall apply to both parties.]

XV. Severability

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

XVI. Notices

All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within five (5) days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by U.S. Mail or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

XVII. Assignment

Neither party may assign this License without prior written consent of the other party.

XVIII. Governing Law and Venue

a. [Shall be California or remain silent on this point.]

b. [Consortium shall have up to three (years) to file any suit (as is provided for in state law; **do not accept any shorter term** (OK to remain silent)]

XIX. Perpetual License

Licensor hereby grants to Consortium a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that were accessible during the term of this Agreement.