

CORPORATE AND SPECIAL LIBRARIES LICENSE

Commentary and guidance on use

1. The first step

- 1.1 Download both the license text and this commentary. You will need both in order to complete the license. You will need to refer to both documents as you work through the license text, so you may find it helpful to print them out and mark up the license before making changes to the text on your PC.

2. General remarks

- 2.1 This license and commentary use American English (e.g. ‘center’ for ‘centre’ and ‘license’ for the noun ‘licence’). If you wish to change them, you should use your Spellchecker or Find & Replace function when you have finished.
- 2.2 This license can be used as a guide to negotiation, in order to highlight issues that need discussion and agreement. You may wish to list the issues of substance, and your negotiating position on each, before you start. By all means use the license as an agenda, if you prefer.
- 2.3 The license is designed to provide the words you will need to express the agreement you have reached, once your negotiations have been completed, all the business issues have been resolved. As there are no set solutions to any of the business issues, the text contains optional and alternative wording throughout. Read the text carefully and select the text appropriate for the terms you have negotiated.
- 2.4 The use of words in square brackets - [] or { } indicates optional wording that may be included or omitted, or where alternatives are provided for.
- 2.5 Please remember that if you are uncertain about what to do, seek legal advice.

3. Clause by clause commentary: specific points of issue

<i>Clause</i>	<i>Commentary</i>
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Preliminaries	Complete the date and the full names and addresses of the parties.
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| 1.1 | The wording in the definition of Authorized Users includes both full time permanent and part-time/temporary staff and contractors (consultants, IT contractors etc). Both parties need to be clear about who has access. It also provides for remote access. |
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Note that the **Licensed Materials** may include ancillary materials provided by the Publisher to support the journal content in the Licensed Materials. If access and usage of ancillary materials is not to be provided, or is irrelevant to the License, the words within the brackets [] should be deleted.

The definition of **Licensee’s Premises**, and **Schedule 2**, are important. In many cases of licenses to corporate licensees, the concept of the **Secure Network** is more important to the corporation rather than the specific location or number of sites. Corporate licensees are just as anxious to preserve the integrity and security of their networks as the Publisher. However, if the list were to be omitted, the Publisher

would have no recourse if the Licensee were to acquire another business and substantially increase the number of sites during the License term.

Subscription Period applies as the License is modelled on a ‘traditional’ journal subscription model.

- 2.3 Applies as the ‘traditional’ journal subscription model is the basis of the License. The provision for further payment is optional, and the words "[subject to the payment of such fees as the parties may agree]" should be deleted if continuing access is provided free of charge. Note that:
- a) the exception for breach by the Licensee is optional. It reflects the good faith basis of any intellectual property license. It is up to the parties in negotiation to discuss this and agree on its retention or deletion.
 - b) the exception does not operate in the case of bankruptcy or composition with creditors (8.1.3).
 - c) the proviso at the end of 2.3 is optional. It provides for continuing access to the Licensed Materials published and paid for up to the date of breach, even though the breach is by the Licensee, on the principle that what has been bought should be retained. Retain or delete as appropriate.
- 3.1.1 & 3.1.2 Only apply if the journals are mounted locally – see also 4.1.2 and 8.3.
- 3.1.5 The reference to similar material from other publishers applies where the Licensee wishes to arrange it.
- 3.1.10 This is optional, and applies if the Licensed Materials can be used in multiple copies for marketing or information purposes. If use extends to electronic copies, as many corporate licensees require, delete the last sentence in { }.
- 3.1.11 This clause is optional, and should be deleted if the right to supply of copies to other libraries is prohibited under the license, or is not required by the Licensee. If such a right is relevant, the clause allows electronic files to be used to generate paper copies for such supply.
- 4.1.3 Delete if inter-library loan is prohibited or irrelevant.
- 5.2.1 The License should specify which authentication method is to be used: IP address, or an alternative method, which should be specified; ensure that Schedule 1 is also completed accordingly. Select the notice period required – or any alternative you may have negotiated.
- 5.3 This clause is optional, and provides for non-performance by the Publisher.
- 5.4 Select one of the two alternatives in the second part of the clause to reflect what has been agreed as a consequence of withdrawal.
- 5.5 This clause commits the Publisher to assume responsibility for archiving – i.e. long-term preservation of the Licensed Materials. If the Publisher has more specific detailed arrangements and it is agreed that these should be recorded in the License, then the wording of 5.5 should be replaced or amended as appropriate. If it is not relevant to the License, it should be deleted.
- 5.6 This clause deals with usage data. The reference to ‘data protection’ laws applies in the European Union and certain other jurisdictions – not the USA; delete if appropriate.

- 5.7 This clause is a standard provision that the materials are supplied ‘as is’. Under US law, it **MUST BE PRINTED IN UPPER CASE**.
- 5.8 This clause limits the Publisher’s liability to the value of the licence, and disclaims liability for consequential or indirect loss. This sort of limitation is a common device in commercial contracts. However, if this license is being made with a public institution, e.g. a government library, such a clause may be unacceptable for constitutional reasons; many public institutions, including universities, in many US states are legally unable to accept such limitations. Check on the position. In any case, under US law, it **MUST BE PRINTED IN UPPER CASE**.
- 6.1.3 If access is controlled by IP address, delete.
- 6.1.5 Note that this clause requires libraries to pass to the Publisher only the information necessary to activate access under this License, and no more.
- 6.2 This indemnity clause may not be lawful in some countries or states that preclude public institutions giving indemnities (as with 5.8 above). In any case, under US law, it **MUST BE PRINTED IN UPPER CASE**.
- 6.3 Note that the renewal Fee is payable 30 days before or within 30 days from receipt of invoice for subsequent Subscription Periods.
- 8.3 The second part of the clause in brackets should be deleted except where the Licensed Materials are to be mounted locally.
- 9.1 This is an important ‘boilerplate’ provision. Neither party can rely on any statements made by the other unless they are included in this licence. It is included because it makes both the publisher and the library explicitly record every aspect of the licence, so that there is clarity if any issue arises between them afterwards.
- 9.4 Note that this obliges the Publisher to use ‘reasonable’ efforts: i.e. what is practical when a journal title changes hands.
- 9.5 The change of control clause is optional.
- 9.10 Specify jurisdiction. Some public institutions (e.g. government libraries in many US states) are legally unable to agree to any other jurisdiction but their own country or state. There are three points to note:
- a. Where both the Publisher and the Licensee are based in the same state or country, this provision is superfluous as that state’s or country’s laws will apply automatically. The clause can then be deleted;
 - b. Where the Publisher and the Licensee are based in different states or provinces or different countries, **IT IS IMPORTANT** to specify the jurisdiction. This avoids argument over which law should apply in the case of a dispute that can lead to preliminary litigation to establish which jurisdiction, or set of legal rules applies to the dispute. Note that many public institutions, including government libraries and research institutes, cannot accept any jurisdiction other than their own. It has become generally accepted that, if this is an issue, the Licensee’s jurisdiction should apply.
 - c. It should be noted that many international organizations cannot accept the particular jurisdiction of any state. They are established under international treaties and cannot accept or ‘favor’ any particular jurisdiction. Examples include the United Nations and its agencies (WHO, UNSECO, FAO etc),

OECD, Asian Development Bank, IMF etc). Only in such cases should this jurisdiction clause be deleted.

- Schedule 1 Complete with all the details requested, title by title, and include the access method.
- Schedule 2 This is optional and should be deleted unless multiple copying is provided under clause 3.1.11.
- Schedule 3 This is optional; see comment on 1.1, definition of **Licensee's Premises**, above. If the definition is not required, delete Schedule 3. If retained, complete with the details requested in order to provide access to all the sites covered by the License.

Version 4.0

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