Library Futures
Digital Licensing Clause Bank



By Layla Maurer, Esq.

LIBRARY FUTURES

Digital Content Licensing Clause Bank

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About Library Futures

About Library Futures

Library Futures is the vanguard nonprofit organization uncovering and confronting the fundamental policy issues that threaten libraries in the digital age. We believe librarians, policymakers, and community leaders deserve a new approach to digital rights so they can protect, advocate for, and advance a fair digital future for libraries and the communities they serve. Library Futures meets this need with fresh research, visionary policy and advocacy initiatives, and engaging education programs.

Library Futures is a project of the Engelberg Center on Innovation Law & Policy at New York University School of Law.

Visit us online.

About the Author

Layla Maurer served as the first Staff Attorney for the Library Futures program at NYU's Engelberg Center on Innovation Law & Policy, where she helped to develop the legal tools needed for a program aimed towards facilitating more and better access to digital resources and media for use and lending in libraries. Layla has also worked as an attorney for Wizards of the Coast advising on licensing, brand development, and digital game strategy. Her work at Wizards focused on structuring relationships that support the responsible use of intellectual property in interactive media, which included drafting and negotiating license agreements, reviewing marketing and in-game assets, and supporting content planning across multiple platforms.

Before becoming an attorney, Layla worked in digital media, content systems, and higher education. Her roles included systems support, database management, and product testing for platforms focused on digital content delivery and fair use in academic settings. This combination of technical and instructional experience continues to shape her collaborative approach and her focus on long-term, adaptable legal frameworks for digital and creative projects. She earned her M.L.I.S. from Kent State University and her J.D. from Case Western Reserve University School of Law, where she concentrated in law, technology,

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Introduction

Vendor templates are drafted to favor vendors. That's a function of how commercial licensing works, and it means the document in front of you is a starting position, not a finished agreement. The work of negotiation is recognizing what the template's doing, identifying the clauses where the default isn't workable for your library, and moving the document toward language both sides can defend.

The *Library Futures Digital Licensing Clause Bank* provides you two complementary ways to understand and work through a contract. You can start in whichever section you'd like, and you'll find links back and forth between them throughout. The Clause Bank section gives you three versions of each negotiable clause (each denoted with a Clause ID), priority markers for different library needs, and recognition cues for spotting one-sided drafting. The Clause Bank is available in the text of this book and as a website.

The Companion Document helps explain the "why" behind the language in the Clause Bank. You'll find the reasoning behind the versions of each clause, the harder judgment calls that don't fit in a paragraph, bullet point, or spreadsheet cell, and the spots where library and vendor positions diverge. The eight theme chapters walk through the concepts that shape each cluster of clauses. They reference individual clauses by their Clause ID where it helps the discussion. You can find the exact language for each clause in the Clause Bank section or the spreadsheet.

Start with the Companion Document if you want a high-level overview of the kinds of issues and terms you can negotiate. Consult the Clause Bank directly if you already know your topic and are looking for specific advice. If you're using the Clause Bank in an active negotiation, you can then turn to the Companion Doc when you need to understand why a particular Pro-Library Version is drafted the way it is, what a vendor might push back on, and whether the language you're looking at is worth holding for your specific library. The *Library Futures Digital Licensing Clause Bank* is here to help you know when you can negotiate, how to work through an agreement once you've got one in front of you, and how leverage changes what's achievable.

The* Digital Content Licensing Clause Bank *is for general reference, not legal advice. Leverage, jurisdiction, library type, and the specific resource you are licensing all change what's reasonable in any given negotiation. When you need it, consult counsel.

COMPANION DOCUMENT

The following Companion Document provides the conceptual framework behind the clauses in the Clause Bank, walking you through the eight main theme areas for the clauses. Here you will find the reasoning behind the versions of each clause, the harder judgment calls that don't fit in a spreadsheet cell, and the spots where library and vendor positions diverge. Read through or use the links to move back and forth between the Companion Document and individual clauses in the Clause Bank.

Negotiating with Vendors

You *can* negotiate with vendors. You'll find three things in this section that shape that work: when you can negotiate, how to work through an agreement once you've got one in front of you, and how leverage changes what's achievable.

Negotiation Timing

Initial negotiations have the most room for movement. The vendor wants the deal, your library hasn't built operational dependency yet, and both parties expect the template will come back marked up. The Pro-Library Version of clauses you want to push on is more reachable in this window, including ones that can be harder to secure later in the relationship.

You can also negotiate during the term. A signed contract isn't sealed; either party can request an amendment at any time. The leverage is different from initial negotiation because your library may already depend on the platform and the vendor knows it, but material changes are still possible, particularly when something's changed in your operating environment, in the law, or in the vendor's offering. If a problem's surfaced mid-term, it's worth addressing directly rather than waiting for renewal.

Renewal is its own window. The vendor expects to sign a fresh document with you, so renewal-stage amendments are easier to introduce than mid-term ones. Time pressure is the constraint: if negotiations stall close to the renewal date, you risk either accepting language you'd have wanted to change or letting the contract auto-renew. The notice periods in the agreement tell you how much runway you've got, and renewal conversations work better when they start well before the date.

Working Through an Agreement

When you have got a vendor template or you're picking up an agreement for review, the method is the same regardless of when in the relationship you're working. The goal is to move from "I have this document" to "I know what to change and why."

A first read, end to end, without marking anything, is worth the time. You're looking for the shape of the document: how the vendor's structured it, where the substantive

provisions sit, what the definitions are doing, what gets incorporated by reference. Vendor templates can place substantive limits inside the definitions or inside cross-referenced external documents, and that's easier to catch on a clean first pass than during a clause-by-clause review.

On the second read, you can mark the clauses you want to change. For each one, the matching row in the Clause Bank gives you something to compare against. If the vendor's language matches the Common Pro-Vendor Language, you're looking at a typical pattern and the clause bank's alternatives will work directly. If the vendor's language is more aggressive than what's in the column, the situation's more serious and your response will need to be sharper. If the vendor's language is actually more favorable than the column, you may not need to negotiate that clause at all.

For each clause you're changing, the choice between the Pro-Library Version and the Reasonable Fallback depends on what you're trying to signal. The Pro-Library Version is a stronger position; sending it tells the vendor you're prepared for a real negotiation. The Reasonable Fallback signals you're looking for a quick path to signature. Either is a legitimate opening: the right choice depends on your priorities and the kind of relationship you want with this vendor.

Before you send the marked-up document back, sorting your own priorities is worth doing. Negotiations may take more than one round, and you won't win every change. The clauses that are baselines (the ones you won't sign without), gimmes (the ones you can let go if the vendor pushes), and nice-to-haves (the ones you'll drop if the negotiation needs to move) come into focus once you sit with the document. The priority columns in the Clause Bank spreadsheet are a starting point for that sorting, and your knowledge of your library does the rest.

Leverage

What is achievable in a negotiation depends on leverage, and leverage isn't a single thing. It shows up in a few different forms.

One form is the vendor wanting the deal. New vendors entering the library market, smaller vendors trying to grow, and any vendor competing against an incumbent for your business may accept terms they would not accept from an established customer they can afford to lose. Consortium negotiations carry this kind of leverage because the aggregated customer base is valuable to the vendor.

Alternatives are another form. If a comparable resource is available from another vendor, walking is a real option and the vendor knows it. If the resource is unique and your patrons need it, the vendor knows you can't easily walk, and what's achievable on terms is more constrained.

Applicable law is leverage too. State library confidentiality statutes, accessibility laws, public records laws, and procurement rules aren't just substantive requirements; they're negotiation tools. A vendor that's pushing back on patron privacy language has a harder time when there's a state statute that requires you to insist on it.

Where leverage is high, the Pro-Library Version is more reachable on the clauses you've identified as priorities. Where leverage is moderate, the Reasonable Fallback may be the practical landing, with the Pro-Library Version achievable on a smaller set of priority clauses. Where leverage is low, the Reasonable Fallback is the floor, and the work is protecting your priority clauses rather than winning the whole document. The priority columns in the Clause Bank can help with that triage.

What to Do When a Vendor Won't Budge

Some vendors won't yield on certain clauses. The reasons vary: a real upstream constraint the vendor can't rewrite, a business model decision the vendor isn't going to change, or just a standard process that doesn't accommodate the change you're asking for.

When that happens, your choices are to accept the language (and document your reasoning, both for internal purposes and for revisiting at renewal), to escalate within the vendor organization (sometimes useful, especially when your contact doesn't have authority to approve the change), or to walk.

The right choice depends on the clause, your leverage, and what's at stake. Library Futures published the Risk Exposure Scorecard in the *Understanding Confidentiality and Risk Assessment* reference guide for exactly this kind of decision. Its five factors (Mission Alignment, Operational Dependency, Third Party Reputation, Financial Exposure, and Defensibility) map closely to the considerations that should drive whether a particular piece of language is acceptable to your library.

1. Grant and Scope

The Grant and Scope clauses define what your library is receiving when it signs the agreement and what your patrons, staff, and partner libraries can do with the licensed content. Vendor templates can write this theme narrowly, which leaves operational gaps that show up later as friction or unexpected restrictions.

1.1 The Frame of the Grant

The license grant clause (GS-LG) sets the frame for everything else. Two pieces of the Pro-Library Version are worth knowing about when you're reading a vendor template: the preservation of rights "reasonably implied by the nature of library use," and the explicit preservation of applicable copyright exceptions. The first gives you cover for uses the contract didn't specifically anticipate; the second keeps the contract from quietly overriding patron rights under copyright law. The grant clause also includes a sentence clarifying that the agreement covers only the licensed digital content and doesn't address rights with respect to physical materials in the collection, which can come up when vendor templates start reaching toward physical collection rights through digital licensing.

1.2 Who and Where

Clauses related to who can use the licensed content and where they can use it (GS-AU, GS-AS) include Authorized Users and Authorized Sites and Remote Access, and they define the operational reach of the license. Narrow definitions tied to currently-registered patrons accessing from listed addresses can leave out walk-in users, reciprocal borrowers, consortium members, and remote users, all of whom may be part of how your library serves its community. The Pro-Library Versions of both clauses are deliberately broad, treating remote access as a standard expectation of library service and allowing you to add or change service locations without triggering additional fees.

1.3 What Patrons Can Do

Clauses related to what patrons can do with the licensed content (GS-PU, GS-AT) include

Permitted Uses and Attribution and Citation, and they shape the patron experience. Restrictive permitted-use language (view-only access, prohibitions on download or print) can leave you paying for a service that doesn't support what your patrons came to do. Restrictive citation language can require pre-approval, mandate branded formats, or charge per-citation fees for what would be ordinary citation in academic, journalistic, or professional work. The Pro-Library Versions keep both kinds of restrictions out of the agreement and preserve applicable copyright exceptions explicitly.

1.4 Library-Specific Operations

Clauses related to library-specific operations (GS-IL, GS-TDM, GS-AF, GS-PR) include Interlibrary Loan, Text and Data Mining, Accessibility and Format-Shifting, and Preservation Copies, and they cover operations that are central to libraries and that vendors sometimes restrict because of upstream agreements with publishers.

The interlibrary loan clause anchors on Section 108 of the Copyright Act and the Commission on New Technological Uses of Copyrighted Works (CONTU) guidelines, which give libraries the right to fulfill interlibrary loan requests under specified conditions. When a vendor responds to an ILL ask by invoking upstream constraints, you can ask for title-level transparency about which content is affected and on what terms, rather than accepting a blanket prohibition.

The text and data mining (TDM) clause is calibrated for library operational use: indexing, categorization, and repurposing of textual data and metadata for reference systems and patron-facing services. It also addresses AI specifically, by prohibiting vendor use of the licensed content, library data, or patron data for training machine learning or generative AI models without consent, while preserving your library's and patrons' ability to use AI tools internally. If your library supports active digital humanities work or other research-side TDM, this clause may need to be expanded beyond the operational scope drafted here.

The accessibility and format-shifting clause anchors on the Americans with Disabilities Act (ADA), Section 504, and applicable state accessibility laws, and includes platform conformance to Web Content Accessibility Guidelines (WCAG) 2.1 AA and format-shifting rights for patrons with disabilities.

Preservation has different weight depending on your library type. For state libraries, consortia, and libraries with named special collections, preservation copies can be a baseline. For public library digital content licensing in general, perpetual access (covered

in the Access and Continuity chapter) addresses the operationally equivalent concern, and the preservation clause can be a gimme.

2. Access and Continuity

The Access and Continuity clauses cover what happens between signing the agreement and walking away from it: how reliably the platform works, what happens when content changes, what happens if the vendor migrates or sells, what happens to your access when the relationship ends. Vendor templates can leave most of these provisions vague or one-sided, which makes the operational value of the license harder to predict over time.

2.1 Perpetual Access

The perpetual access clause (AC-PA) is one of the harder clauses in the bank to negotiate. The substantive ask is that when fees have been paid for specific content during the term, your library retains access to that content after the term ends. Vendors are sometimes themselves licensees, holding agreements with publishers, authors, or aggregators that may not permit them to grant perpetual access on every piece of content; the Pro-Library Version accounts for this by asking the vendor to identify content where upstream agreements prevent perpetual access, with the parties negotiating alternatives for that content in good faith.

When a vendor invokes upstream constraints in response to a perpetual access ask, the productive next move is to ask for specifics: which content is affected, what upstream agreement creates the constraint, what alternative terms are available for that content. Vague invocations of "upstream rights" without specifics are worth pushing back on; specific identifications open the door to title-level carve-outs that work for both sides.

2.2 Operational Continuity

Clauses related to operational continuity (AC-SL, AC-CC, AC-PM, AC-SSO) include Service Levels and Uptime, Content Changes, Platform Migration and Successor Obligations, and Authentication and Single Sign-On, and they define the reliability of the service over time.

The service level clause (AC-SL) gives concrete shape to what "available" means. "Commercially reasonable efforts" without measurable commitment, reporting, or remedy for failure is a vendor promise that can mean anything in practice. The Pro-Library Version sets a 99.9% uptime target with defined maintenance windows, monthly uptime reports,

and service credits scaling with failure severity; the Reasonable Fallback steps down to 99.5% with smaller credits.

The content changes clause (AC-CC) addresses what happens when the vendor changes the licensed content during the term. Without notice, substitution, and remedy provisions, removals can degrade the value of a multi-year subscription substantially. The Pro-Library Version requires sixty days' notice for material removals, substitute content of comparable scope and quality, and a pro-rata refund or partial termination right.

The platform migration clause (AC-PM) protects you when the vendor's situation changes. Migrations and acquisitions can happen during long-term agreements; without notice, cost allocation, and quality obligations, a migration can force an integration project you didn't budget for. The Pro-Library Version sets a 180-day notice period, puts migration costs on the vendor, and requires successor entities to assume all obligations including perpetual access.

The authentication clause (AC-SSO) covers how patrons and staff sign in. Vendor-proprietary authentication creates friction for patrons and lock-in for the library. The Pro-Library Version requires support for industry-standard library authentication methods (library card barcode, IP address, Security Assertion Markup Language (SAML), OpenAthens, Shibboleth, EZproxy) without additional fees.

3. Financial Terms

The Financial Terms clauses cover what you're paying, how the price changes over time, and how the money moves. Three clauses, all procedural, but with operational consequences that can compound across a multi-year agreement.

3.1 Fees and Escalators

The fees and escalators clause (FT-FE) is where long-term cost gets shaped. Uncapped escalators can compound over the term of a multi-year agreement. The Pro-Library Version uses Consumer Price Index (CPI) alone as the escalator cap, which is a position consortia sometimes hold and is on the strict end of what vendors will accept. The Reasonable Fallback adds a small buffer above CPI. The right cap for your library depends on leverage and the length of the agreement; both versions also require notice and a termination right if the proposed increase exceeds the cap.

3.2 Payment Terms and Invoicing

The payment terms clause (FT-PT) is calibrated for the payment cycles libraries actually operate on. Vendor templates can default to fifteen or thirty days, which doesn't match how public library and government payment processes work. The Pro-Library Version uses sixty days; the Reasonable Fallback uses forty-five. Both include notice and cure provisions before suspension and protect access on amounts in good-faith dispute. The specific number is worth adjusting to your library's procurement environment; the structure of the protections is what carries across.

3.3 Pricing Transparency

The pricing transparency clause (FT-PX) is the replacement for what's traditionally called a "most-favored customer" or MFN clause. Traditional MFN provisions are not standard in vendor templates, and the audit mechanism is hard to use in practice because the comparison ("similarly situated library") is hard to define. The Pro-Library Version reframes the concern around disclosure: methodology disclosure on request, notice within thirty

days if more favorable pricing is offered to comparable libraries, and equivalent pricing offered prospectively. The clause is useful for consortia and state-level institutions where equity across the membership is a substantive concern.

4. Data and Privacy

The Data and Privacy clauses cover patron privacy, vendor data collection, third-party sharing, security standards, breach notification, and ownership of patron-created content. Library professional ethics, state library confidentiality statutes, and the broader consumer privacy regime all bear on these provisions. The financial and reputational consequences of a privacy failure can extend well beyond the contract value.

4.1 The Consolidated Privacy Clause

The privacy and data clause (DP-PD) consolidates what could be three separate clauses (end-user information, vendor data collection and use, third-party sharing) into one comprehensive provision with five internal sections: legal compliance, end-user information, data use, third-party sharing, breach notification, and termination. The consolidation reflects how these issues actually interact: tight end-user privacy language can be undermined by broad vendor data ownership, and tight data ownership can be undermined by broad third-party sharing rights.

The Pro-Library Version anchors on legal compliance as the foundation. State library confidentiality statutes exist in nearly every state and have specific requirements about reader records; Family Educational Rights and Privacy Act of 1974 (FERPA) applies in school and academic library partnerships; the broader consumer privacy regime (California Consumer Privacy Act (CCPA), California Privacy Rights Act (CPRA), Virginia Consumer Data Protection Act (VCDPA), General Data Protection Regulation (GDPR) where relevant) covers additional ground. The compliance language covers laws in force today and laws enacted during the term.

The substantive provisions then add specific protections that go beyond statutory minimums. The end-user information section limits vendor collection to operationally necessary purposes and prohibits marketing use. The vendor data use section addresses ownership and prohibits use of platform data for training AI models or developing AI products without consent. The third-party sharing section requires consent for any sharing beyond service providers strictly necessary for platform operation. The breach notification section requires written notice within forty-eight hours, with a note that some institutions handling particularly sensitive data negotiate twenty-four. The termination section requires return or destruction of patron data within ninety days.

The Reasonable Fallback maintains the law-compliance anchor and the operationally critical protections (no marketing use, no AI training without notice, notice before legal process response, breach notification per applicable law) but uses softer language on collection scope and third-party sharing. The Reasonable Fallback is a workable landing for many agreements. The Pro-Library Version is the stronger position when patron privacy is a priority.

4.2 Security and Patron-Created Content

The security standards clause (DP-SC) anchors on legal compliance and adds industry-standard frameworks (SOC 2 Type II, ISO 27001) as substantive benchmarks. The breach notification timing parallels the privacy clause: forty-eight hours in the Pro-Library Version. The clause also explicitly carves itself out of the general limitation of liability; without that carve-out, breach-related damages can be capped at amounts well below actual remediation costs.

The licensee-created content clause (DP-LC) covers patron-created material: annotations, notes, tags, search histories, reading lists. Vendor templates can claim ownership of this material, which creates lock-in: patrons can't take their reading histories or research notes with them if your library changes platforms. The Pro-Library Version preserves library and patron ownership and requires the vendor to provide export functionality in a usable format. For libraries supporting research or scholarly work, this clause has more weight; for libraries primarily licensing consumer-facing content, it has less.

5. Risk Allocation

The Risk Allocation clauses distribute financial exposure between the parties. Representations and Warranties, Indemnification, Limitation of Liability, Insurance, Force Majeure, and Trademark and Logo Use all address questions of who bears what when something goes wrong. Vendor templates can allocate risk toward the library by margins that don't reflect which party controls the underlying risk.

5.1 What the Vendor Is Promising

The representations and warranties clause (RA-RW) covers the substantive promises the vendor makes about the licensed content and platform. A vendor that disclaims all warranties through "as is" and "as available" language has not made enforceable promises about the content's rights status, the platform's performance, or compliance with applicable law. The risk for each of those falls on the library by default.

The Pro-Library Version asks the vendor to represent five specific things: that the vendor has the rights to grant the licenses, that the content doesn't infringe third-party intellectual property, that the content and platform comply with applicable laws including privacy, accessibility, and data security, that the content is substantially as described, and that the platform will substantially conform to its documentation and operate in a manner suitable for library use. The Reasonable Fallback qualifies the infringement and compliance representations with "to Licensor's knowledge" and "applicable to Licensor's operations" language, which softens the warranties but keeps the substantive promises in place.

5.2 Indemnification and Limitation of Liability

An indemnification clause (RA-IN) shifts the cost of certain claims from one party to another. If a third party sues over something covered by the indemnification, the indemnifying party pays for the defense and any judgment or settlement. Indemnification for intellectual property infringement claims is the version that comes up in digital content licensing: if a third-party rightsholder sues alleging the licensed content infringes their copyright, the vendor that licensed you the content is the party with knowledge of and control over the rights chain, and the indemnification puts the cost on them.

In vendor-library relationships, one-directional indemnification might look like the library indemnifying the vendor for the library's use of the platform, and the vendor disclaiming any obligation to indemnify the library, including for infringement of the vendor's own content. The Pro-Library Version is the opposite arrangement: the vendor indemnifies the library for infringement claims, breaches of the vendor's representations and warranties, and data security and privacy incidents, while the library's only indemnification obligation is for material breach of the use restrictions. The Reasonable Fallback is genuinely mutual, with each party indemnifying the other for claims arising from their own breaches, but the substantive vendor indemnification for intellectual property (IP) and privacy stays in place.

The limitation of liability clause (RA-LL) caps the total amount one party can recover when the other breaches. Without a cap on liability, the breaching party's exposure is uncapped. A data security incident, for example, can require the party to pay for regulatory penalties, breach notifications to end users, and subscription identity protection services for those users.

A cap can be static or fluid. A static cap sets a fixed ceiling no matter how long you've been in the agreement; this might look like an agreement to cap liability at the total of the fees paid in the preceding twelve months. A fluid cap puts the amount of liability for either party at the total value of the fees the licensee has paid under the agreement to the date the breaching party receives notice. For multi-year agreements, the static cap is the better pro-library position because the maximum liability is fixed. For shorter terms, the fluid cap is usually better because the static twelve-month cap can exceed the full value of a short engagement.

Both versions in the Clause Bank preserve uncapped liability for the categories where realistic damages can be high: indemnification obligations, data security and privacy breaches, intellectual property infringement, and claims arising from gross negligence or willful misconduct. These are the categories where a cap could leave the library without meaningful recourse.

The Pro-Library Version and the Reasonable Fallback both carve indemnification out of the cap explicitly. Vendors may accept the cap structure but resist uncapped exposure for data and privacy breaches; a separate higher cap for that category is a workable alternative to collapsing data and privacy into the general cap.

5.3 Other Risk Provisions

Clauses related to other risk provisions (RA-IS, RA-FM, RA-TM) include Insurance, Force Majeure, and Trademark and Logo Use.

The insurance clause (RA-IS) is written to be instructional rather than prescriptive: it suggests that a vendor carry commercial general liability, professional liability or errors and omissions, and cyber liability insurance, with coverage limits and certificate requirements set forth in a schedule. Where a vendor asks for the library to carry similar insurance, check with your finance and risk management personnel to see what you can actually provide.

The force majeure clause (RA-FM) is a list of events that can excuse performance. Vendor templates can draft force majeure broadly enough to excuse most vendor failures, including ordinary business risks like cyber-attacks, software defects, and supplier failures. The Pro-Library Version excludes those from force majeure because they're controllable business risks the vendor should bear; vendors may push back on this, and the Reasonable Fallback uses a broader definition combined with a termination right for prolonged non-performance.

The trademark and logo clause (RA-TM) prevents the vendor from using your library's name in marketing without consent. For libraries where the institutional name carries public trust, vendor marketing use of the library brand can implicate the library's public standing. The Pro-Library Version requires consent for each use; the Reasonable Fallback allows factual listing without endorsement implication.

6. Term and Exit

The Term and Exit clauses define how the relationship starts, how it renews, how either party can end it, and what happens when ownership changes hands. Vendor templates can make these asymmetric, with the vendor able to exit easily and the library locked in.

6.1 Term, Renewal, and Termination

Clauses related to term, renewal, and termination (TE-TR, TE-TC, TE-TV) include Term and Renewal Mechanics, Termination for Cause, and Termination for Convenience.

The term and renewal clause (TE-TR) addresses auto-renewal, which is how libraries get locked into multi-year terms they didn't specifically agree to. The Pro-Library Version eliminates auto-renewal entirely, requiring an affirmative agreement for renewal. The Reasonable Fallback retains auto-renewal but with shorter notice periods and clearer notice requirements from the vendor.

The termination for cause clause (TE-TC) covers material breach, cure periods, and termination for nonpayment, all together. Vendor templates can draft asymmetric cure periods (longer for the licensee than for the vendor) and can let the vendor define what counts as material breach. The Pro-Library Version makes the cure periods symmetric at thirty days, defines material breach in terms of substantial impairment of value, and addresses termination for nonpayment specifically with sixty days' notice and a dispute carve-out. Preservation of perpetual access rights on paid content survives termination for cause.

The termination for convenience clause (TE-TV) addresses what happens when either party wants out without specific cause. Vendor templates can make this asymmetric too, with the vendor able to terminate for convenience and the library locked in for the term. The Pro-Library Version makes the right mutual at ninety days' notice, with pro-rata refunds and perpetual access preserved on paid content.

6.2 Assignment and Change of Control

The assignment and change of control clause (TE-AC2) addresses what happens when one party sells or restructures. Vendor templates can let the vendor assign freely while

requiring vendor consent for any library assignment, even in the context of library system consolidation or government reorganization. The Pro-Library Version makes the consent requirements mutual with a not-unreasonably-withheld standard, requires successor entities to assume all obligations including perpetual access, and carves out library reorganization scenarios from the consent requirement.

7. Dispute Resolution

Clauses related to dispute resolution (DR-GL, DR-DR2) include Governing Law and Venue and Dispute Resolution Procedures.

7.1 Governing Law and Venue

The governing law and venue clause (DR-GL) covers which law applies and where disputes get heard. While many institutions and organizations aim for governing law and venue to match their home jurisdiction for convenience, public libraries and state institutions have concerns beyond those of most other institutions. Libraries are subject to local public records laws, accessibility requirements, sovereign immunity, and procurement rules that mean in many instances libraries simply can't agree to have their contracts governed by laws outside of their home state. The Pro-Library Version of this clause places governing law and venue in your library's home jurisdiction and preserves any sovereign or governmental immunity. The Reasonable Fallback version is written to allow a neutral commercial jurisdiction with a carve-out for mandatory local protections (like local public records laws) and the right to sue in either jurisdiction.

7.2 Dispute Resolution Procedures

The dispute resolution procedures clause (DR-DR2) covers whether mandatory arbitration applies. While some vendors and content providers may argue that arbitration is faster and cheaper, the simple fact is that public institutions may not be able to agree to closed-door arbitration procedures. The Pro-Library Version replaces mandatory arbitration with informal good-faith discussion followed by mediation, with court access preserved at any time. The Reasonable Fallback uses pre-litigation discussion and optional mediation, still without giving up court access.

8. Governance and Change Management

The Governance and Change Management clauses control how the agreement functions, how notices work, what audit rights the vendor has, and what counts as the complete agreement.

8.1 Amendment and Incorporation

The unilateral amendment clause (GC-UA) addresses situations where one side can change language without notice or consent and applies broadly to things like updated Terms of Use and Privacy Policies or fee schedules. Where the agreement incorporates those terms by reference, negotiated provisions become the starting point rather than the agreement. The Pro-Library Version requires signed amendments for any changes and excludes click-through, browse-wrap, or platform terms. The Reasonable Fallback permits operational documentation updates but requires the agreement to control over any other vendor document.

8.2 Notices, Audits, and Integration

Clauses related to notices, audits, and integration (GC-NO, GC-AR, GC-EA) include Notice Provisions, Audit Rights, and Entire Agreement.

The notice provisions clause (GC-NO) determines when any required notices are considered legally effective. Templates sometimes include notice mechanisms that make communications effective on dispatch rather than receipt; the Pro-Library Version requires written notice through defined channels with actual receipt requirements. The Reasonable Fallback gives flexibility on timing while keeping the structure mutual.

The audit rights clause (GC-AR) covers what the vendor can audit and how. The Pro-Library Version limits audits to use of the licensed content, requires reasonable notice, caps frequency at once per year, puts costs on the vendor, excludes patron information protected by state library confidentiality laws, and restricts audits to parties in direct privity

with the vendor (which prevents the vendor from reaching consortium members or affiliated libraries that have no direct contractual relationship with the vendor).

Finally, the entire agreement clause (GC-EA) determines what external documents are considered part of the contract. The Pro-Library Version restricts what gets incorporated by limiting incorporations to only those documents expressly attached as exhibits.

CLAUSE BANK

The Clause Bank covers eight major themes and offers examples of Pro-Vendor, Pro-Library, and Reasonable Fallback language for a variety of clauses you will encounter when reading and negotiating contracts. For more background on the clauses, each links to the relevant section of the Companion Document. You can also find the Clause Bank in spreadsheet form via the Appendix.

GRANT AND SCOPE CLAUSES

License Grant (GS-LG)

Theme

Grant and Scope

Typical Section

Definitions / Grant

Common Pro-Vendor Language

Subject to the terms and conditions of this Agreement and the timely payment of all fees, Licensor hereby grants to Licensee a limited, non-exclusive, non-transferable, revocable license to access and use the Licensed Content solely through the platform designated by Licensor, solely for the purposes expressly set forth in this Agreement, and solely during the Term. No other rights are granted, whether by implication, estoppel, or otherwise. Licensor reserves all rights not expressly granted in this Agreement.

Pro-Library Version

Licensor grants Licensee a non-exclusive license to access and use the Licensed Content for the purposes set forth in this Agreement, including in-library and remote access by Authorized Users, distribution within Licensee's service area, and any uses reasonably necessary to fulfill Licensee's mission as a library serving its community. The license is non-transferable except in connection with the assignment provisions of this Agreement. The rights granted include any rights reasonably implied by the nature of library use, including the right to provide patron access, the right to use the Licensed Content in support of Licensee's core library functions, and the right to exercise any rights granted under applicable copyright exceptions. This Agreement governs only the Licensed Content provided by Licensor and does not address or restrict Licensee's rights with respect to physical materials in its collection.

Reasonable Fallback

Licensor grants Licensee a non-exclusive, non-transferable license to access and use the Licensed Content for the purposes set forth in this Agreement during the Term. The license includes the right to provide Authorized Users with access to the Licensed Content and to use the Licensed Content in the ordinary course of Licensee's library operations. Nothing in this Agreement limits any rights that Licensee or its Authorized Users may have under applicable copyright exceptions, including fair use and fair dealing. This Agreement governs only the Licensed Content provided by Licensor and does not address Licensee's rights with respect to physical materials in its collection.

Why?

The license grant defines what the library is actually receiving and frames every other right in the agreement. Narrow grants let the vendor argue that any unanticipated use is unauthorized. The Pro-Library Version includes scope language ensuring this Agreement does not affect rights with respect to physical collection materials, which keeps any digital lending or physical lending questions outside the scope of this contract.

Watch For

- Grants tied to a specific platform that the vendor can change or sunset.
- 'Solely' and 'expressly' as restrictive qualifiers that foreclose reasonable implied uses.
- 'No other rights granted by implication' language that purports to override fair use.
- Revocability provisions that give the vendor unilateral control over the license.
- Provisions that purport to apply to the library's owned physical collection.

Companion Doc Ref

Section 1.1 (The Frame of the Grant)

Authorized Users (GS-AU)

Theme

Grant and Scope

Typical Section

Definitions / Grant

Common Pro-Vendor Language

‘Authorized Users’ shall mean current, registered patrons of Licensee who have been issued credentials by Licensor or its designee, who access the Licensed Content from Licensee’s physical premises, and who agree to be bound by Licensor’s End User Terms of Service. Licensor reserves the right to terminate access for any Authorized User at its sole discretion. Licensee shall be responsible for any unauthorized use by any individual to whom Licensee provides credentials.

Pro-Library Version

‘Authorized Users’ means Licensee’s patrons, cardholders, registered users, walk-in users, employees, volunteers, and contractors, whether accessing the Licensed Content from Licensee’s premises or remotely. Authorized Users also include patrons of any library with which Licensee has a reciprocal access, consortium, or interlibrary agreement, and unaffiliated members of the public who access the Licensed Content from Licensee’s premises. Licensee will use commercially reasonable efforts to ensure that Authorized Users comply with the terms of this Agreement, but Licensee will not be responsible for the conduct of individual Authorized Users beyond the use of reasonable authentication and notice practices.

Reasonable Fallback

‘Authorized Users’ means Licensee’s patrons, cardholders, registered users, walk-in users, staff, volunteers, and contractors, accessing the Licensed Content from Licensee’s premises or remotely through Licensee’s authentication systems. Authorized Users include patrons of libraries with which Licensee has a consortium or reciprocal access agreement, to the extent such access is permitted by the upstream consortium or reciprocal agreement. Licensee will use reasonable efforts to inform Authorized Users of relevant use restrictions and will not be responsible for occasional individual misuse by Authorized Users.

Why?

The Authorized Users definition determines who can actually use what the library is paying for. Narrow definitions exclude walk-in users (which conflicts with public library service mandates), exclude reciprocal and consortium users (which conflicts with established library cooperation), or exclude remote users (which conflicts with how patrons actually use digital content). Broad responsibility provisions can make the library liable for any individual user’s behavior.

Watch For

- Definitions limited to ‘registered’ or ‘current’ patrons that exclude walk-ins.
- Definitions limited to ‘on-premises’ access.
- Requirements that users agree to vendor terms of service that may conflict with library policies.
- Unlimited liability for user conduct.
- Vendor-side termination rights for individual users without notice or cause.

Companion Doc Ref

Section 1.2 (Who and Where)

Authorized Sites and Remote Access (GS-AS)

Theme

Grant and Scope

Typical Section

Definitions / Grant

Common Pro-Vendor Language

Authorized Users shall access the Licensed Content only from Licensee's premises located at the address(es) set forth in Schedule A. Remote access shall be permitted only through Licensor's designated authentication system and only for Authorized Users who have been individually approved by Licensor. Any access from outside the United States shall require Licensor's prior written consent.

Pro-Library Version

Authorized Users may access the Licensed Content from any of Licensee's branches, bookmobiles, outreach service points, and other service locations, and from any location remotely through Licensee's authentication systems, without regard to the geographic location of the user. Licensee may add or change service locations during the Term by notice to Licensor, without additional fees. Remote access is a standard expectation of library service and is not subject to additional restrictions or fees.

Reasonable Fallback

Authorized Users may access the Licensed Content from Licensee's branches, service points, and other locations, and remotely through Licensee's authentication systems. Licensee may add or update service locations during the Term by notice to Licensor without additional fees, provided that material expansion of service area through merger, consolidation, or substantial new service points may require an updated fee schedule. Remote access is permitted for Authorized Users regardless of geographic location, subject to applicable export control laws.

Why?

Public libraries operate from multiple physical locations, and library services routinely extend beyond walls to bookmobiles, outreach programs, and remote access. Site definitions that lock the library into a specific address list, or that require additional fees for new branches, can prevent the library from expanding service or responding to community needs.

Watch For

- Schedules that list specific addresses without provision for adding new ones.
- Per-location or per-branch fees tied to access.
- Remote access tied to a single authentication method controlled by the vendor.
- Geographic restrictions on patron access that conflict with library service mandates.

Companion Doc Ref

Section 1.2 (Who and Where)

Permitted Uses (GS-PU)

Theme

Grant and Scope

Typical Section

Grant / Use Restrictions

Common Pro-Vendor Language

Authorized Users shall be permitted to view the Licensed Content through the Licensor platform for personal, non-commercial reference only. Authorized Users shall not download, print, copy, modify, distribute, display, perform, or create derivative works of the Licensed Content. Any use not expressly permitted is prohibited and constitutes a material breach of this Agreement.

Pro-Library Version

Authorized Users may view, download, print, save, and excerpt the Licensed Content for personal study, research, reference, scholarship, journalism, and the ordinary purposes of library use. Licensee may also use the Licensed Content for reasonable internal library purposes, including staff training, reference services, core library functions, and patron assistance. Nothing in this Agreement limits any use that is permitted under applicable copyright exceptions, including fair use, fair dealing, library exceptions, or educational exceptions.

Reasonable Fallback

Authorized Users may view, download, print, and save reasonable portions of the Licensed

Content for personal study, research, scholarship, and reference. Licensee may use the Licensed Content for reasonable internal library purposes, including staff training, core library functions, and patron assistance. Nothing in this Agreement limits any use that is permitted under applicable copyright exceptions, including fair use and library exceptions.

Why?

Permitted uses define what library patrons can actually do with the content they access. Restrictive permitted uses (view-only, no download, no print) defeat the purpose of library licensing for most public library use cases. Vendor templates often draft permitted uses narrowly and then prohibit everything else, which can create breach exposure for routine library activities.

Watch For

- Permitted uses limited to 'view only' or 'personal reference only.'
- Prohibitions on download or print that block ordinary library use.
- Definitions of 'commercial use' broad enough to cover ordinary library operations.
- Material breach language attached to use restrictions that creates outsize exposure for routine patron behavior.

Companion Doc Ref

Section 1.3 (What Patrons Can Do)

Attribution and Citation (GS-AT)

Theme

Grant and Scope

Typical Section

Permitted Uses / IP

Common Pro-Vendor Language

Any reference to, citation of, or quotation from the Licensed Content shall require Licensor's prior written approval and use of the citation format prescribed by Licensor. Licensee may be charged a per-citation fee as set forth in Schedule [X]. Licensee acknowledges that this Section applies regardless of any rights that would otherwise be available under applicable copyright law.

Pro-Library Version

Authorized Users may cite, quote, and reference the Licensed Content in accordance with customary academic, journalistic, and professional citation conventions, without any obligation to obtain prior permission, pay additional fees, or use a citation format prescribed by Licensor. Nothing in this Agreement will limit any use that is permitted under applicable copyright exceptions, including fair use, fair dealing, library exceptions, or educational exceptions.

Reasonable Fallback

Authorized Users may cite, quote, and reference the Licensed Content for educational, scholarly, journalistic, and internal business purposes, provided that customary attribution

to the source is given. No additional permission or fee will be required for citations consistent with applicable copyright exceptions, including fair use and fair dealing.

Why?

Citation rights look procedural but shape what users can actually do with content after they read it. Pro-vendor citation language can require permission, mandate branded formats, and impose per-citation fees, which turn a licensing relationship into a permissions toll booth and can override rights users would have under copyright law.

Watch For

- Mandatory branded citation formats.
- Permission requirements buried in Terms of Use incorporated by reference.
- Per-citation fees framed as royalties.
- Language that purports to override applicable copyright exceptions.

Companion Doc Ref

Section 1.3 (What Patrons Can Do)

Interlibrary Loan (GS-IL)

Theme

Grant and Scope

Typical Section

Grant / Permitted Uses

Common Pro-Vendor Language

Licensee shall not provide the Licensed Content, in whole or in part, to any other library, institution, or third party for any purpose, including interlibrary loan, document delivery, or resource sharing. Any such transfer shall constitute a material breach of this Agreement and may result in immediate termination and statutory damages.

Pro-Library Version

Licensee may fulfill interlibrary loan and document delivery requests from non-commercial libraries by providing individual articles, chapters, or other portions of the Licensed Content to the requesting library, in print or secure electronic form, for the use of an individual patron of the requesting library. Such transfers will be consistent with Section 108 of the Copyright Act, applicable Canadian Copyright Act provisions, and the CONTU guidelines or any successor or equivalent professional practice. Licensor acknowledges that interlibrary loan is a core library service and that this Agreement is not intended to restrict it.

Reasonable Fallback

Licensee may fulfill interlibrary loan requests from non-commercial libraries by providing individual articles, chapters, or other portions of the Licensed Content to the requesting

library for the use of an individual patron, consistent with Section 108 of the Copyright Act and the CONTU guidelines. Transfers will be made in print or secure electronic form that does not permit further redistribution. Licensee will not provide systematic transfers or bulk sharing of the Licensed Content under this Section.

Why?

Interlibrary loan is a core library service and a long-established library practice protected by copyright law. Vendor templates often prohibit ILL outright, which puts libraries in conflict with their service mission and with the rights they hold under Section 108. The Pro-Library Version anchors on existing law and professional practice rather than asking the vendor to create new rights.

Watch For

- Outright prohibitions on ILL.
- Restrictions to print-only ILL that conflict with current ILL practice.
- Definitions of 'systematic' that capture ordinary ILL volume.
- Statutory damages or material breach language attached to ILL.
- Upstream constraints flagged by the vendor as preventing ILL; ask which specific content is constrained and why.

Companion Doc Ref

Section 1.4 (Library-Specific Operations)

Text and Data Mining (GS-TDM)

Theme

Grant and Scope

Typical Section

Grant / Permitted Uses

Common Pro-Vendor Language

Text and data mining, automated extraction, machine learning training, web scraping, and any computational or non-display use of the Licensed Content are strictly prohibited. Any such use shall be a material breach of this Agreement and may result in immediate termination, statutory damages, and forfeiture of all fees paid. The prohibition in this Section applies regardless of whether the use is commercial in nature. Licensor reserves the right to use Licensee data, end-user data, and the Licensed Content for the training of machine learning models and the development of AI products.

Pro-Library Version

Licensee may, and may permit its Authorized Users and staff to, use third-party technology tools and computational methods to identify, categorize, index, and repurpose textual data and metadata associated with the Licensed Content, solely for use within Licensee's reference systems, discovery layers, and patron-facing services, and to support research and educational use by Authorized Users. Licensee may retain indexes, metadata, and derived data created under this Section beyond termination of this Agreement, provided that no substantial portion of the original Licensed Content is reproduced or redistributed.

Licensor will not use the Licensed Content, Licensee data, or end-user data for the training of machine learning or generative AI models, and will not incorporate the Licensed Content into AI products or services, without Licensee's specific prior written consent for each such

use. This restriction applies to Licensor, Licensor's affiliates, Licensor's service providers, and any third party with which Licensor shares the Licensed Content or related data.

Reasonable Fallback

Licensee and its Authorized Users may perform text and data mining on the Licensed Content for non-commercial research, scholarly, and operational purposes, including indexing, discovery, and the production of metadata to support Licensee's library services. Licensee may retain derived data and metadata for non-commercial research, operational, and verification purposes. Substantial reproduction or redistribution of the original Licensed Content is not permitted under this Section.

Licensor will not use the Licensed Content, Licensee data, or end-user data for the training of machine learning or generative AI models intended for distribution beyond the platform, and will not incorporate the Licensed Content into AI products or services, without Licensee's prior written notice. Licensor's use of data for operational improvement of the platform is permitted on an aggregate, deidentified basis.

Why?

TDM rights affect how libraries can support discovery, indexing, and patron research. The clause is also where vendor and library positions on AI now meet: many libraries support staff and patron use of AI tools as part of internal operations and research, but oppose vendor-side use of library content or data to train AI models or build AI products. The Pro-Library Version preserves library-side AI use while requiring specific consent for any vendor-side AI use; the Reasonable Fallback narrows the consent requirement to externally distributed models and operational notice for internal uses.

Watch For

- Definitions of TDM that exclude indexing and discovery (which most libraries need).
- API-gated TDM that gives the vendor control over performance.
- Prohibitions on retention of derived data that block reproducibility.

- Broad vendor AI training rights buried in data use clauses elsewhere in the agreement.
- Definitions of ‘service improvement’ broad enough to cover AI training.
- Vendor data ownership claims that survive termination.
- Statutory damages language attached to TDM prohibitions.

Companion Doc Ref

Section 1.4 (Library-Specific Operations)

Accessibility and Format-Shifting (GS-AF)

Theme

Grant and Scope

Typical Section

Grant / Permitted Uses

Common Pro-Vendor Language

Licensee may not modify, adapt, reformat, or create derivative works of the Licensed Content. Any accessibility accommodations required by applicable law shall be requested in writing from Licensor and shall be provided at Licensor's sole discretion. Licensor makes no representation regarding the accessibility of the Licensed Content or platform and disclaims any obligation to provide content in accessible formats.

Pro-Library Version

Licensor will deliver and maintain the Licensed Content and platform in compliance with all applicable accessibility laws, including the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Section 508 of the Rehabilitation Act where applicable, and state accessibility laws applicable in jurisdictions where Licensee operates. The platform will conform to WCAG 2.1 Level AA or any successor standard. Licensor will provide Licensee with a current Voluntary Product Accessibility Template (VPAT) or equivalent accessibility conformance report annually and upon request.

Licensee may reformat, convert, or otherwise adapt the Licensed Content as necessary to provide accessibility accommodations to Authorized Users with disabilities, including the

creation of accessible copies in alternative formats, consistent with applicable copyright exceptions for accessibility.

Reasonable Fallback

Licensor will comply with all applicable accessibility laws, including the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, in the delivery and operation of the Licensed Content and platform. Licensor will make commercially reasonable efforts to ensure that the platform conforms to WCAG 2.1 Level AA or any successor industry standard, and will provide Licensee with a VPAT or equivalent conformance report upon request.

Licensee may reformat or adapt the Licensed Content as reasonably necessary to provide accessibility accommodations to Authorized Users with disabilities, consistent with applicable copyright exceptions.

Why?

Public libraries have legal obligations under the ADA and Section 504, and most state libraries have additional state-level accessibility requirements. Vendor templates that disclaim accessibility or that limit format-shifting can put libraries in violation of their statutory obligations. The Pro-Library Version anchors on applicable law plus the industry-standard WCAG conformance and VPAT practice, which together give the library both legal cover and operational accountability.

Watch For

- Disclaimers of accessibility obligations.
- Accommodation processes that route through the vendor and require individual approval.
- Restrictions on format-shifting that conflict with copyright accessibility exceptions.
- VPATs that are outdated or that disclose substantial conformance gaps without remediation commitments.
- WCAG conformance promised at Level A (which is insufficient) rather than AA.

Companion Doc Ref

Section 1.4 (Library-Specific Operations)

Preservation Copies (GS-PR)

Theme

Grant and Scope

Typical Section

Grant / Permitted Uses

Common Pro-Vendor Language

Licensee shall not make copies of the Licensed Content for archival, preservation, or backup purposes. All preservation activities, if any, shall be performed by Licensor. Licensee acknowledges that the platform provides sufficient access for all permitted purposes and that no separate preservation copy is necessary.

Pro-Library Version

Licensee may make and retain copies of the Licensed Content as reasonably necessary for the preservation of Licensee's collection, including dark archive copies, security backups, and copies deposited with established preservation services such as LOCKSS, CLOCKSS, Portico, or any successor or equivalent preservation infrastructure. Preservation copies will be used only for preservation, replacement, and restoration purposes, and will not be used to circumvent any other provision of this Agreement. Licensee's preservation rights will survive termination of this Agreement to the extent necessary to maintain access to content for which fees were paid during the Term.

Reasonable Fallback

Licensee may make copies of the Licensed Content as reasonably necessary for

preservation, backup, and restoration purposes, including deposit with established library preservation services. Such copies will be used only for preservation and restoration purposes and will not be used to circumvent the use restrictions of this Agreement.

Why?

Preservation is a substantial concern for state libraries, consortia, and libraries with named special collections, including local history, government documents, and similar long-term holdings. For most public library digital content licensing (ebooks, popular databases, streaming media), preservation is less central, and the practical equivalent for ongoing access is the perpetual access clause. Libraries that do have preservation commitments will want to secure local copy rights and deposit rights with established preservation services.

Watch For

- Prohibitions on any local copies.
- Restrictions to vendor-only preservation.
- Requirements that preservation copies be destroyed at termination.
- Definitions of preservation that exclude established library preservation services.
- Upstream rights flagged as preventing preservation deposits.

Companion Doc Ref

Section 1.4 (Library-Specific Operations)

FINANCIAL TERMS CLAUSES

Fees and Escalators (FT-FE)

Theme

Financial Terms

Typical Section

Financial / Fees

Common Pro-Vendor Language

Fees shall be as set forth in Schedule [X]. Fees shall increase annually at a rate determined by Licensor in its sole discretion, with notice provided at least thirty (30) days prior to renewal. Licensee's continued use of the Licensed Content following such notice shall constitute acceptance of the new fees.

Pro-Library Version

Fees are set forth in Schedule [X] and will not increase during the initial Term. For each renewal Term, fees will increase by no more than the percentage change in the Consumer Price Index for the preceding twelve months. Licensor will provide Licensee with written notice of any fee change at least one hundred twenty (120) days prior to the start of the renewal Term. If Licensor proposes a fee increase exceeding the cap, Licensee may terminate this Agreement at the end of the then-current Term without penalty.

Reasonable Fallback

Fees are set forth in Schedule [X]. For each renewal Term, fees may increase by no more than the lesser of (i) the percentage change in the Consumer Price Index for the preceding twelve months plus two percent, or (ii) five percent. Licensor will provide Licensee with

written notice of any fee change at least ninety (90) days prior to the start of the renewal Term. If Licensor proposes a fee increase exceeding the cap, the parties will negotiate in good faith, and Licensee may terminate this Agreement at the end of the then-current Term without penalty if no agreement is reached.

Why?

Fee escalators determine long-term cost. Uncapped escalators can compound dramatically over multi-year terms. The Pro-Library Version uses CPI alone, which is the position many consortia hold to in negotiations; this is on the strict end of what vendors will accept and is appropriately characterized as a strong negotiating position. The Reasonable Fallback adds a small buffer above CPI, which is the more common landing in non-consortium negotiations. The right cap is genuinely subjective and depends on the library's leverage and the length of the agreement.

Watch For

- Escalators tied to vendor discretion.
- Escalators tied to obscure indexes that are not readily verifiable.
- Notice periods too short to allow procurement response.
- Acceptance-by-continued-use mechanisms that lock in increases without renegotiation.
- Schedule references to fee amounts that are not actually set in the schedule.

Companion Doc Ref

Section 3.1 (Fees and Escalators)

Payment Terms and Invoicing (FT-PT)

Theme

Financial Terms

Typical Section

Financial / Payment

Common Pro-Vendor Language

Licensee shall pay all fees in advance upon execution of this Agreement and upon each renewal. Invoices shall be paid in full within fifteen (15) days of issuance. Late payments shall accrue interest at the rate of 1.5 percent per month or the maximum rate permitted by law, whichever is less. Licensor may suspend access for any amount unpaid past the due date without notice.

Pro-Library Version

Invoices will be paid in accordance with Licensee's standard payment practices, which require not less than sixty (60) days for processing from receipt of a complete and accurate invoice. Invoices must include all information required by Licensee's procurement policies, including purchase order references where applicable. Licensor will not suspend access for any amount in good-faith dispute. For undisputed late payments, interest will accrue at the lesser of one percent per month or the maximum rate permitted by law, beginning after a thirty (30) day cure period following written notice.

Reasonable Fallback

Invoices will be paid within forty-five (45) days of receipt of a complete and accurate invoice. Invoices must include any information reasonably required by Licensee's procurement policies. Licensor will not suspend access for any amount in good-faith dispute, and will provide Licensee with at least fifteen (15) days' written notice and an opportunity to cure before suspending access for any other unpaid amount. Late payment interest will accrue at the lesser of 1.5 percent per month or the maximum rate permitted by law.

Why?

Public library and government payment cycles vary substantially by institution. Sixty days reflects standard public-sector processing time; some libraries can accept thirty or forty-five, and some need ninety or even longer. The right number depends on the library's specific procurement environment. Notice and cure provisions before suspension protect the library from patron-facing service interruptions while still giving the vendor meaningful payment protection.

Watch For

- Payment terms shorter than the library's actual processing cycle.
- Suspension rights without notice.
- Suspension rights triggered by disputed amounts.
- Interest rates above local maximum.
- Invoice requirements that do not accommodate purchase orders or procurement coding.

Companion Doc Ref

Section 3.2 (Payment Terms and Invoicing)

Pricing Transparency (FT-PX)

Theme

Financial Terms

Typical Section

Financial / Fees

Common Pro-Vendor Language

[No clause; vendor templates typically omit pricing transparency provisions.]

Pro-Library Version

Licensor will disclose to Licensee, upon request and on a confidential basis, the methodology used to determine Licensee's pricing tier, including the factors considered (such as institutional size, type, service area, or use level) and the typical ranges for libraries in comparable tiers. If during the Term Licensor offers materially more favorable pricing to libraries of comparable size, type, and use, Licensor will notify Licensee within thirty (30) days and will offer Licensee the equivalent pricing prospectively for the remainder of the Term.

Reasonable Fallback

Licensor represents that the pricing offered to Licensee is consistent with Licensor's general pricing practices for libraries of comparable size and type. If during the Term Licensor materially changes its pricing structure in a way that benefits libraries of comparable size and type, Licensor will notify Licensee and the parties will discuss appropriate adjustment at the next renewal.

Why?

Pricing transparency provisions are uncommon in vendor templates but are increasingly raised by libraries facing wide variation in pricing across institutions of similar size. The clause is most useful for consortia and state-level institutions, where equity across the membership is a core concern. The form drafted here focuses on disclosure and good-faith adjustment rather than the audit-based 'most-favored customer' mechanism, which is more familiar but rarely used effectively in library licensing.

Watch For

- Broad confidentiality clauses elsewhere in the agreement that prevent libraries from comparing pricing across institutions.
- Definitions of 'comparable' libraries that are narrow enough to capture nothing.
- Adjustment mechanisms that defer entirely to vendor discretion.

Companion Doc Ref

Section 3.3 (Pricing Transparency)

ACCESS AND CONTINUITY CLAUSES

Perpetual Access and Post-Termination Rights (AC-PA)

Theme

Access and Continuity

Typical Section

Term / Termination

Common Pro-Vendor Language

Upon termination or expiration of this Agreement, all rights to access the Licensed Content shall immediately cease. Licensor shall have no obligation to provide continued access, archival copies, or file delivery, regardless of fees paid during the Term. Any continued access following termination shall be at Licensor's sole discretion and subject to Licensor's then-current fees.

Pro-Library Version

Upon termination or expiration of this Agreement for any reason other than Licensee's uncured material breach, Licensor will provide Licensee with continued access to the Licensed Content for which fees were paid during the Term. Licensor will provide such access either through continued availability of the platform or through delivery of the content in a format reasonably suitable for Licensee's preservation and reference purposes, at Licensee's option, within sixty (60) days of termination. For any content as to which Licensor's upstream agreements prevent perpetual access, Licensor will identify the affected content and the parties will negotiate appropriate alternatives in good faith. If Licensor ceases operations, is acquired, or discontinues the platform, Licensor will use

commercially reasonable efforts to transfer Licensee's access rights to a successor or to fulfill them through file delivery.

Reasonable Fallback

Licensee will retain perpetual, non-exclusive access to the Licensed Content for which fees were paid during the Term, except where Licensor's upstream agreements prevent perpetual access for specific content. Licensor will provide such access either through continued availability of the platform at a maintenance fee not to exceed [X percent] of the most recent annual fee, or through delivery of the content in a usable digital format. For content as to which upstream constraints apply, Licensor and Licensee will negotiate appropriate alternatives in good faith.

Why?

Without perpetual access, every payment is a rental, not a purchase. Whether the library needs perpetual access depends on whether the content has long-term reference or preservation value. Many vendors are themselves licensees and may have real upstream constraints on perpetual access for specific content; the clause asks for continued access where the vendor can grant it and good-faith negotiation of alternatives where the vendor cannot.

Watch For

- Perpetual access granted only to a vendor platform that can sunset.
- Uncapped maintenance fees.
- Carve-outs for content the vendor 'no longer has rights to,' which can grow over time.
- Missing successor and acquisition language.
- Definitions of Licensed Content that exclude updates or supplements.
- Upstream constraints invoked without specificity; ask the vendor to identify which content is affected and why.

Companion Doc Ref

Section 2.1 (Perpetual Access)

Service Levels and Uptime (AC-SL)

Theme

Access and Continuity

Typical Section

Service Levels

Common Pro-Vendor Language

Licensor shall use commercially reasonable efforts to make the platform available to Authorized Users. Licensor makes no representation or warranty regarding uptime, response time, or service quality. Scheduled maintenance, emergency maintenance, force majeure events, and any other interruptions shall not constitute a breach of this Agreement and shall not entitle Licensee to any credits, refunds, or other remedies.

Pro-Library Version

Licensor will maintain the platform with a target uptime of 99.9 percent measured monthly, excluding scheduled maintenance conducted during specified maintenance windows of no more than four hours per month and announced to Licensee at least seventy-two (72) hours in advance. Licensor will provide Licensee with monthly uptime reports. If actual uptime falls below 99.5 percent in any month, Licensee will be entitled to a service credit equal to ten percent of that month’s fees for each percentage point below 99.5 percent. Persistent failure to meet the uptime target over three consecutive months will constitute material breach permitting termination.

Reasonable Fallback

Licensor will maintain the platform with a target uptime of 99.5 percent measured monthly, excluding scheduled maintenance conducted during specified maintenance windows announced reasonably in advance. Licensor will provide monthly uptime reports upon Licensee's request. If actual uptime falls below 99 percent in any month, Licensee will be entitled to a service credit of five percent of that month's fees. Persistent failure over a sustained period will permit Licensee to terminate the affected services.

Why?

Service availability matters for any platform that patrons rely on. Vendor templates often provide only 'commercially reasonable efforts' with no measurable commitment, no reporting, and no remedy for failure. Defined uptime, scheduled maintenance windows, and service credits give the library a concrete commitment and a way to respond when the platform underperforms.

Watch For

- 'Commercially reasonable efforts' as the only standard.
- Maintenance windows that allow extended or repeated downtime.
- Force majeure exclusions that are broad enough to cover most failures.
- Reporting available only on request rather than proactively.
- Service credits as the sole remedy with no escalation to termination.

Companion Doc Ref

Section 2.2 (Operational Continuity)

Content Changes, Removals, and Substitutions (AC-CC)

Theme

Access and Continuity

Typical Section

Content / Services

Common Pro-Vendor Language

Licensor reserves the right, in its sole discretion, to add, modify, substitute, or remove any portion of the Licensed Content at any time, with or without notice. Removals and substitutions shall not constitute a breach of this Agreement and shall not entitle Licensee to any refund, credit, or other remedy.

Pro-Library Version

If Licensor removes any portion of the Licensed Content during the Term for reasons other than legal compulsion, and the removal materially diminishes the value of the Licensed Content to Licensee, Licensor will (i) provide Licensee with at least sixty (60) days' prior written notice of the removal, (ii) offer substitute content of comparable scope, quality, and value, and (iii) at Licensee's option, provide a pro-rata refund of fees paid for the removed content or terminate the affected portion of this Agreement without penalty. Removals required by legal compulsion will be accompanied by prompt notice and an explanation of the basis for removal.

Reasonable Fallback

Licensor may add, modify, or remove content during the Term. If Licensor removes a material portion of the Licensed Content for reasons other than legal compulsion, Licensor will provide Licensee with reasonable prior notice and will offer substitute content of comparable scope and quality where available. If removals result in material diminishment of the value of the Licensed Content, Licensee may terminate the affected portion of this Agreement with a pro-rata refund of fees paid for the removed content. Removals required by legal compulsion will be accompanied by prompt notice.

Why?

Content removals can degrade the value of a license over time, especially for multi-year subscriptions where patrons come to rely on specific titles. Vendor templates often grant unilateral removal rights with no remedy, which converts the contract value into a moving target. Notice, substitution, and remedy provisions protect the library's investment without preventing the vendor from managing its catalog.

Watch For

- Unilateral removal rights with no notice.
- No substitution obligation.
- No remedy for material removals.
- Legal compulsion exceptions that swallow the notice rule.
- 'Material' definitions that are vague enough to allow significant removals before any obligation triggers.

Companion Doc Ref

Section 2.2 (Operational Continuity)

Platform Migration and Successor Obligations (AC-PM)

Theme

Access and Continuity

Typical Section

Service / Term

Common Pro-Vendor Language

Licensor may migrate the Licensed Content to a different platform or technology infrastructure at any time at its sole discretion. Licensee shall be responsible for any costs of adapting its systems to the new platform. Licensor's obligations under this Agreement may be assigned to a successor entity without consent of Licensee.

Pro-Library Version

If Licensor migrates the Licensed Content to a different platform, Licensor will provide Licensee with at least one hundred eighty (180) days' prior written notice, will bear all costs of migration including the integration of Licensee's authentication and discovery systems, and will ensure that the new platform meets or exceeds the functionality, accessibility, and service levels of the original platform. If the new platform does not meet these requirements, Licensee may terminate this Agreement with a pro-rata refund. Licensor may assign this Agreement to a successor entity only with Licensee's prior written consent, which will not be unreasonably withheld. Any successor will assume Licensor's obligations including perpetual access obligations.

Reasonable Fallback

If Licensor migrates the Licensed Content to a different platform, Licensor will provide Licensee with at least ninety (90) days' prior written notice and will ensure that the new platform provides functionality and service levels reasonably comparable to the original. Licensor will bear reasonable costs of migration, including the integration of Licensee's standard authentication systems. Licensor may assign this Agreement to a successor entity, provided that the successor assumes Licensor's obligations and that Licensee is given prompt notice. If the migration materially diminishes the platform's value or accessibility, Licensee may terminate the affected portion of this Agreement with a pro-rata refund.

Why?

Platform migrations and vendor acquisitions are common during multi-year terms. Without notice, cost allocation, and quality obligations, a migration or change of control can effectively force the library to pay for an integration project it did not budget for, or to accept degraded service. Successor obligations matter because the value of perpetual access and other long-term commitments depends on whether they survive a vendor change.

Watch For

- Unilateral migration rights with no notice or cost allocation.
- Assignment rights with no consent or notice requirement.
- Successor obligations that exclude perpetual access or other long-term commitments.
- Force majeure or sole discretion language that covers business decisions rather than uncontrollable events.

Companion Doc Ref

Section 2.2 (Operational Continuity)

DATA AND PRIVACY CLAUSES

Privacy and Data (DP-PD)

Theme

Data and Privacy

Typical Section

Privacy / Data Protection

Common Pro-Vendor Language

Licensor may collect, use, retain, analyze, share with affiliates and service providers, and otherwise process information about end users' access to and use of the Licensed Content. Licensor may use such information for any lawful purpose, including service improvement, product development, marketing, analytics, and the training of machine learning models. Licensor shall be the sole owner of all data generated through the platform. Licensor may share end-user and platform data with its affiliates, analytics partners, advertising partners, and service providers without notice to or consent of Licensee. Licensor's Privacy Policy, available at [URL], governs the collection and use of all such information and may be updated by Licensor from time to time.

Pro-Library Version

Licensor will comply with all applicable federal, state, and local laws governing the privacy of end-user, patron, or customer data, including all state library confidentiality statutes, FERPA where applicable, and any successor or additional laws enacted during the Term. Licensor's compliance obligation extends to the laws applicable in any jurisdiction where Licensee operates and where end users access the Licensed Content.

End-user information. Licensor will limit the collection of end-user information to what is reasonably necessary for authentication, fulfillment of requests for Licensed Content, operational troubleshooting, security, and the production of aggregate, deidentified usage

reports for Licensee. Licensor will not use end-user information for marketing, advertising, or any purpose unrelated to the operation of the platform. Licensor will not respond to subpoenas, court orders, or other legal process seeking end-user information without giving Licensee prompt written notice and a reasonable opportunity to respond, except where prohibited by law.

Vendor data collection and use. Data generated through Licensee's use of the platform belongs to Licensee to the extent it contains or is derived from Licensee's end-user information, content selections, or operational decisions. Licensor may use aggregate, deidentified usage data solely for the operational improvement of the platform and for industry-standard usage reporting. Licensor will not use any data generated through the platform for the training of machine learning or generative AI models, for the development of AI products, for marketing, or for sale or transfer to third parties, without Licensee's prior written consent.

Third-party sharing. Licensor will not share end-user information, usage data, or any data derived from Licensee's use of the platform with any third party, including any Licensor affiliate, advertising partner, or marketing partner, except (i) with service providers strictly necessary for the operation of the platform under written agreements requiring confidentiality and use limitations no less protective than this Agreement, or (ii) with Licensee's prior written consent for each specific sharing arrangement. Licensor will disclose to Licensee, upon request, the categories of third parties that receive any data under this Section and the purposes for which the data is shared.

Breach notification. Licensor will notify Licensee in writing within forty-eight (48) hours of becoming aware of any actual or reasonably suspected unauthorized access to or disclosure of end-user information, and will cooperate with Licensee in any investigation, notification, or remediation required.

Termination. Licensor will deliver to Licensee or destroy all end-user information and Licensee-specific data at termination of this Agreement, except aggregate, deidentified data already incorporated into platform improvements and information Licensor is required to retain by law.

Reasonable Fallback

Licensor will comply with all applicable federal, state, and local laws governing the privacy of end-user, patron, or customer data, including all state library confidentiality statutes and any successor or additional laws enacted during the Term. Licensor's compliance obligation

extends to the laws applicable in any jurisdiction where Licensee operates and where end users access the Licensed Content.

End-user information. Licensor will collect end-user information only as reasonably necessary for authentication, content delivery, security, operational support, and aggregate usage reporting. Licensor will not use end-user information for marketing or for sale or transfer to third parties unrelated to platform operation. Licensor will not disclose end-user information in response to legal process without giving Licensee reasonable prior notice, except where prohibited by law or where the disclosure relates to imminent risk of harm.

Data use. Licensor may collect and use aggregate, deidentified data for purposes of operational improvement, security, and the production of usage reports for Licensee. Licensor will not sell or transfer such data to third parties for marketing. Use of data for the training of machine learning models or for product development outside of operational platform improvement will be permitted only on an aggregate, deidentified basis and only with prior notice to Licensee.

Third-party sharing. Licensor may share data with service providers acting on Licensor's behalf for purposes of platform operation, security, and analytics, provided that such service providers are bound by confidentiality obligations and use limitations consistent with this Agreement. Licensor will disclose, upon Licensee's reasonable request, the categories of service providers that receive end-user information.

Breach notification. Licensor will notify Licensee of any confirmed unauthorized access to or disclosure of end-user information within the timeframes required by applicable law and in any event within a reasonable period after discovery. Licensor will cooperate with Licensee in any investigation or notification required.

Termination. Licensor will, at Licensee's option, deliver to Licensee or destroy all end-user information and Licensee-specific data within ninety (90) days of termination.

Why?

End-user privacy, vendor data collection, and third-party sharing are three distinct aspects of the same underlying concern: who controls data about library patrons and library operations, and what that party can do with it. The three are best addressed together because they interact: tight end-user privacy language can be undermined by broad vendor data ownership, and tight data ownership can be undermined by broad third-party sharing rights. The Pro-Library Version anchors on applicable law (state library

confidentiality laws in particular) and then adds specific protections that go beyond statutory minimums. Forty-eight hour breach notification is achievable in current commercial practice; institutions handling particularly sensitive data sometimes negotiate twenty-four hours.

Watch For

- Privacy Policies incorporated by reference and modifiable by the vendor.
- Definitions of ‘aggregate’ or ‘deidentified’ that allow re-identification.
- Carve-outs for ‘service providers’ or ‘affiliates’ that swallow the no-sharing rule.
- Marketing and product development purposes embedded in long lists of permitted uses.
- AI training listed alongside ordinary operational uses.
- Subpoena and legal process responses that do not require notice to the library.
- Breach notification timeframes longer than what state law requires for libraries.
- Data rights surviving termination.

Companion Doc Ref

Section 4.1 (The Consolidated Privacy Clause)

Security Standards and Breach Notification (DP-SC)

Theme

Data and Privacy

Typical Section

Security / Data Protection

Common Pro-Vendor Language

Licensor shall maintain commercially reasonable security measures for the platform. Licensor makes no specific representation regarding security standards, certifications, or testing. In the event of a security incident, Licensor shall notify Licensee within a reasonable period after determining that notification is appropriate. Licensor's obligations under this Section are subject to the limitation of liability in Section [X].

Pro-Library Version

Licensor will comply with all applicable federal and state laws governing data security and breach notification, and will maintain industry-standard security measures for the platform, including measures consistent with SOC 2 Type II, ISO 27001, or equivalent recognized security frameworks. Licensor will provide Licensee, on request, with current security certifications, summaries of security audit results, and information about Licensor's incident response procedures.

Licensor will notify Licensee in writing within forty-eight (48) hours of becoming aware of any actual or reasonably suspected security incident affecting Licensee's data, end-user information, or access to the Licensed Content. The notification will include all available

information about the nature, scope, and likely impact of the incident, and Licensor will provide updates as additional information becomes available. Licensor will cooperate with Licensee in any investigation, notification, or remediation required by law or by Licensee's policies, including any notification of end users or regulatory authorities.

Licensor's obligations under this Section will not be subject to the limitation of liability set forth elsewhere in this Agreement.

Reasonable Fallback

Licensor will comply with all applicable federal and state laws governing data security and breach notification, and will maintain industry-standard security measures appropriate to the nature of the platform and the sensitivity of the data processed. Licensor will provide Licensee with reasonable information about its security practices upon request, including any current security certifications.

Licensor will notify Licensee of any confirmed security incident affecting Licensee's data, end-user information, or access to the Licensed Content within the timeframes required by applicable law and in any event within a reasonable period after discovery. The notification will include available information about the nature and scope of the incident. Licensor will cooperate with Licensee in any required investigation or notification.

Why?

Security standards and breach notification timing have become highly regulated, with state laws varying in their specific requirements. A law-compliance anchor captures the full regulatory landscape; specific provisions address the operational details that go beyond what law requires. The carve-out from limitation of liability for security obligations is important; without it, breach-related damages can be capped at amounts well below the actual cost of remediation. Forty-eight hour notification is achievable in current commercial practice; institutions handling particularly sensitive data sometimes negotiate twenty-four hours.

Watch For

- ‘Commercially reasonable’ security as the only standard.
- No specific notification timing.
- Security obligations subject to the general limitation of liability.
- Vendor right to determine when notification is ‘appropriate.’
- Carve-outs for incidents ’caused by third parties’ that excuse the vendor for service provider failures.

Companion Doc Ref

Section 4.2 (Security and Patron-Created Content)

Licensee-Created Content and Annotations (DP-LC)

Theme

Data and Privacy

Typical Section

Intellectual Property

Common Pro-Vendor Language

All annotations, notes, tags, comments, search histories, and other content created by Authorized Users in connection with the platform shall be the property of Licensor. Licensee assigns and shall cause its Authorized Users to assign all rights, title, and interest in such content to Licensor.

Pro-Library Version

Licensee and its Authorized Users retain all rights, title, and interest in any annotations, notes, tags, comments, search histories, reading lists, and other content created by Licensee or Authorized Users in connection with the platform. Licensor will provide Licensee with the ability to export such content in a usable, non-proprietary format at any time during the Term and at termination. Licensor may not use such content for any purpose other than displaying it to the creating user, except with the specific consent of the user or Licensee as applicable.

Reasonable Fallback

Licensee and its Authorized Users retain ownership of annotations, notes, tags, and other user-created content created in connection with the platform. Licensor will provide reasonable functionality for Licensee or Authorized Users to export such content. Licensor may use aggregate, deidentified information derived from user-created content for the operational improvement of the platform.

Why?

User-created content is a form of intellectual property generated through library use of the platform. Vendor templates that claim ownership can prevent libraries and patrons from migrating to other platforms with their annotations and reading histories, which creates lock-in and can affect long-term research investments.

Watch For

- Vendor ownership of user-created content.
- Assignment of rights without specific user consent.
- No export functionality.
- Use rights extending to marketing or sale.
- Definitions of ‘user-created content’ broad enough to capture ordinary search activity.

Companion Doc Ref

Section 4.2 (Security and Patron-Created Content)

RISK ALLOCATION CLAUSES

Representations and Warranties (RA-RW)

Theme

Risk Allocation

Typical Section

Warranties / Representations

Common Pro-Vendor Language

THE LICENSED CONTENT AND PLATFORM ARE PROVIDED 'AS IS' AND 'AS AVAILABLE.' LICENSOR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, AVAILABILITY, OR ANY WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

Pro-Library Version

Licensor represents and warrants that: (a) Licensor has all rights necessary to grant the licenses set forth in this Agreement; (b) the Licensed Content does not infringe the intellectual property rights of any third party; (c) the Licensed Content and platform comply with all applicable laws, including privacy, accessibility, and data security laws; (d) the Licensed Content is substantially as described in the documentation provided to Licensee; and (e) the platform will substantially conform to its documentation and will operate in a manner reasonably suitable for library use. These representations and warranties will survive termination of this Agreement.

Reasonable Fallback

Licensor represents and warrants that: (a) Licensor has the rights necessary to grant the licenses set forth in this Agreement; (b) to Licensor's knowledge, the Licensed Content does not infringe the intellectual property rights of any third party; (c) the Licensed Content and platform will be operated in compliance with applicable laws, including privacy, accessibility, and data security laws applicable to Licensor's operations; and (d) the platform will operate substantially in accordance with its documentation.

Why?

Representations and warranties are the substantive promises the vendor makes about what is being sold. Vendor templates often disclaim all warranties through extensive 'as is' language, which leaves the library with no recourse if the content infringes or the platform fails to perform. Specific representations on rights, non-infringement, compliance, and platform performance provide the legal anchor for indemnification and for remedies if things go wrong.

Watch For

- Comprehensive 'as is' and 'as available' disclaimers in all-capital text.
- Disclaimer of non-infringement, which leaves the licensee carrying the IP risk for the vendor's content.
- Disclaimer of compliance with law, which conflicts with regulatory obligations.
- 'To Licensor's knowledge' qualifiers on every representation.

Companion Doc Ref

Section 5.1 (What the Vendor is Promising)

Indemnification (RA-IN)

Theme

Risk Allocation

Typical Section

Indemnification

Common Pro-Vendor Language

Licensee shall defend, indemnify, and hold harmless Licensor from any and all claims arising out of or related to Licensee's use of the Licensed Content or platform, including claims by Authorized Users or third parties, regardless of cause. Licensor disclaims any obligation to indemnify Licensee for any claim, including claims of infringement of the Licensed Content.

Pro-Library Version

Licensor will defend, indemnify, and hold harmless Licensee, its officers, employees, agents, and Authorized Users from any claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or related to: (a) any claim that the Licensed Content or platform infringes a third-party intellectual property right; (b) any breach of Licensor's representations, warranties, or obligations under this Agreement; or (c) any data security incident or privacy violation involving the Licensed Content or platform. Licensee's only indemnification obligation will be for claims arising from Licensee's material breach of the use restrictions in this Agreement.

Reasonable Fallback

Licensor will indemnify Licensee against third-party claims that the Licensed Content infringes intellectual property rights or that the platform fails to comply with applicable privacy and data security laws. Licensee will indemnify Licensor for third-party claims arising from Licensee's material breach of the use restrictions in this Agreement. Each party's indemnification obligations will be subject to prompt notice and reasonable cooperation, and will not be subject to the limitation of liability set forth elsewhere in this Agreement.

Why?

Indemnification is where the largest dollar amounts in a license actually live. The principled allocation is that each party indemnifies the other for risks within its own control: the vendor controls the content and the platform and carries the risk that its content infringes or its platform leaks data. The carve-out from limitation of liability is essential; without it, indemnification protection can be capped at amounts well below realistic exposure.

Watch For

- One-way indemnification running from licensee to licensor.
- Indemnification capped at trivial amounts while licensee obligations remain uncapped.
- Carve-outs that swallow the rule ('Licensor indemnifies for infringement, except for claims arising out of Licensee's use').
- Sole control of defense by the vendor, including settlement rights binding on the licensee.

Companion Doc Ref

Section 5.2 (Indemnification and Limitation of Liability)

Limitation of Liability (RA-LL)

Theme

Risk Allocation

Typical Section

Limitation of Liability

Common Pro-Vendor Language

IN NO EVENT SHALL LICENSOR'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID BY LICENSEE IN THE PRECEDING THREE (3) MONTHS. LICENSOR SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOST DATA, OR BUSINESS INTERRUPTION, REGARDLESS OF THE THEORY OF LIABILITY AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, INCLUDING INDEMNIFICATION OBLIGATIONS. LICENSEE'S LIABILITY UNDER THIS AGREEMENT IS NOT LIMITED.

Pro-Library Version

Each party's total liability under this Agreement, for matters other than indemnification obligations, data security and privacy breaches, intellectual property infringement, and gross negligence or willful misconduct, will not exceed the fees paid by Licensee in the preceding twelve (12) months. The cap will not apply to indemnification obligations, data security and privacy breaches, intellectual property infringement, or claims arising from gross negligence or willful misconduct, which will be uncapped. Neither party will be liable for indirect, consequential, incidental, special, or punitive damages, except where such damages arise from a party's indemnification obligations or from a data security or privacy breach.

Reasonable Fallback

Each party's total liability under this Agreement, for matters other than indemnification obligations, data security and privacy breaches, intellectual property infringement, and gross negligence or willful misconduct, will not exceed the total fees paid by Licensee under this Agreement through the date on which the non-breaching party gives written notice to the other party of the incident or circumstance giving rise to the claim. The cap will not apply to indemnification obligations, data security and privacy breaches, intellectual property infringement, or claims arising from gross negligence or willful misconduct. Neither party will be liable for indirect, consequential, incidental, special, or punitive damages, except where such damages arise from a party's indemnification obligations or from a data security or privacy breach.

Why?

The limitation of liability cap is symmetric: it limits what either party can recover from the other. For multi-year agreements, the static twelve-month cap (in the Pro-Library Version) bounds the library's own exposure at a known number even as cumulative payments grow. The fluid notice-date cap (in the Reasonable Fallback) protects more recovery against the vendor for late-relationship breaches but exposes the library to symmetrically larger damages claims if the library is the breaching party. For shorter terms, the fluid cap is often better because the static twelve-month cap can exceed the full value of a short engagement. Both versions preserve uncapped liability for the categories where realistic damages can be very large: indemnification, data and privacy breaches, IP infringement, and gross negligence and willful misconduct.

Watch For

- Caps tied to short periods (one month, three months) that effectively eliminate damages exposure.
- Caps that apply to indemnification obligations, which collapses indemnification protection.
- No carve-outs for data or IP.
- Consequential damages disclaimers that apply to indemnification claims, which similarly collapses the protection.
- Mutual caps that look fair but create unequal exposure due to differing risk profiles.

- Vendors that accept the cap structure but resist uncapped exposure specifically for data and privacy breaches; the next move is a separate higher cap for that category rather than collapsing it into the general cap.

Companion Doc Ref

Section 5.2 (Indemnification and Limitation of Liability)

Insurance (RA-IS)

Theme

Risk Allocation

Typical Section

Insurance / Risk Allocation

Common Pro-Vendor Language

Licensor may maintain such insurance as it deems appropriate for its business. Licensor is not obligated to name Licensee as an additional insured or to provide certificates of insurance.

Pro-Library Version

Licensor will maintain commercial general liability, professional liability or errors and omissions, and cyber liability insurance with coverage limits, certificate requirements, and notice obligations as set forth in Schedule [X]. Licensor will provide Licensee with certificates of insurance upon execution and annually thereafter, and will notify Licensee at least thirty (30) days in advance of any material reduction in coverage. [Schedule X to be completed in consultation with Licensee's finance and risk management personnel, calibrated to the nature and scale of the engagement.]

Reasonable Fallback

Licensor will maintain commercial general liability, professional liability or errors and omissions, and cyber liability insurance appropriate to the nature of the services and the volume and sensitivity of data processed under this Agreement, as set forth in Schedule [X].

Licensor will provide Licensee with certificates of insurance upon request. [Schedule X to be completed in consultation with Licensee's finance and risk management personnel.]

Why?

Insurance ensures that the vendor has the financial capacity to honor its indemnification and damages obligations. Specific coverage limits are organization-specific: they should be calibrated to the library's actual exposure tolerance, the nature of the data processed, and the realistic cost of remediation. Setting the limits in a schedule, with input from finance and risk management, keeps the clause workable across libraries of different sizes.

Watch For

- Permissive language ('may maintain') rather than mandatory.
- No cyber liability requirement. No certificate of insurance requirement.
- Tail coverage missing for professional liability.
- Coverage limits well below the realistic exposure from a data breach.

Companion Doc Ref

Section 5.3 (Other Risk Provisions)

Force Majeure (RA-FM)

Theme

Risk Allocation

Typical Section

Risk Allocation

Common Pro-Vendor Language

Licensor shall not be liable for any failure or delay in performance arising from any cause beyond its reasonable control, including acts of God, government action, labor disputes, supplier failures, internet service provider outages, hardware failures, software defects, cyber attacks, pandemic, or any other event that Licensor reasonably believes to be beyond its control. Such events shall not entitle Licensee to any refund, credit, or termination right.

Pro-Library Version

Neither party will be liable for any failure to perform its obligations under this Agreement arising from causes genuinely beyond its reasonable control, including natural disasters, war, terrorism, and government action specifically prohibiting performance. The affected party will give prompt notice of the event and will use commercially reasonable efforts to resume performance as quickly as possible. If a force majeure event prevents substantial performance by Licensor for more than thirty (30) days, Licensee may terminate this Agreement with a pro-rata refund of fees paid for the period of non-performance. Cyber attacks, software defects, hardware failures, and supplier failures are not force majeure events except where they result directly from a qualifying event.

Reasonable Fallback

Neither party will be liable for failure to perform its obligations under this Agreement arising from causes genuinely beyond its reasonable control, including natural disasters, war, terrorism, pandemic, and government action prohibiting performance. The affected party will give prompt notice and use commercially reasonable efforts to resume performance. If a force majeure event prevents substantial performance for more than sixty (60) days, the unaffected party may terminate the affected portion of this Agreement with a pro-rata refund for the period of non-performance.

Why?

Force majeure clauses can be drafted broadly enough to excuse almost any vendor failure. Cyber attacks, software defects, and supplier failures are routine business risks, not uncontrollable events, but they often appear in pro-vendor force majeure lists. Tight definitions plus a termination right for prolonged non-performance protect the library from open-ended service interruptions. The Pro-Library Version excludes cyber attacks from force majeure on the principle that cyber risk is a controllable business risk vendors should bear; vendors may push back on this, and the Reasonable Fallback uses a broader definition combined with the termination right.

Watch For

- Broad lists including ordinary business risks (software defects, cyber attacks, supplier failures).
- Vendor discretion in determining what constitutes force majeure.
- No notice requirement.
- No termination right for extended events.
- No refund obligation for non-performance.

Companion Doc Ref

Section 5.3 (Other Risk Provisions)

Trademark and Logo Use (RA-TM)

Theme

Risk Allocation

Typical Section

Intellectual Property / Marketing

Common Pro-Vendor Language

Licensee hereby grants Licensor a perpetual, royalty-free, worldwide license to use Licensee's name, logo, and trademarks in Licensor's marketing materials, customer lists, case studies, and public communications. Licensor may issue press releases and public statements regarding the relationship without Licensee's consent.

Pro-Library Version

Neither party may use the name, logo, trademarks, or other identifying marks of the other party for any marketing, promotional, or public purpose without the other party's specific prior written consent for each such use. Consent may be revoked at any time on a prospective basis. This restriction does not prevent factual references to the parties' relationship in regulatory filings or in response to direct inquiries.

Reasonable Fallback

Neither party may use the name, logo, or trademarks of the other party in marketing materials, press releases, or public communications without the other party's prior written consent. Each party may list the other in factual customer or vendor lists where such lists do not imply endorsement, and may respond to direct factual inquiries about the relationship.

Why?

Trademark use clauses determine whether the vendor can advertise the relationship as an endorsement. For public libraries and state-level institutions, where the library's name carries public trust, vendor marketing use of the library brand can create reputational risk and implicit endorsement issues. Mutual restrictions with consent requirements are the typical landing point in library licensing.

Watch For

- One-way licenses running from licensee to licensor.
- Perpetual licenses surviving termination.
- Use rights for marketing, press releases, and case studies without consent.
- Definitions of 'public use' that include website customer lists and similar.

Companion Doc Ref

Section 5.3 (Other Risk Provisions)

TERM AND EXIT CLAUSES

Term and Renewal Mechanics (TE-TR)

Theme

Term and Exit

Typical Section

Term / Renewal

Common Pro-Vendor Language

The initial Term of this Agreement shall commence on the Effective Date and shall continue for [X] years. Thereafter, the Agreement shall automatically renew for successive one-year terms at Licensor's then-current fees and terms, unless Licensee provides written notice of non-renewal at least one hundred eighty (180) days prior to the end of the then-current Term.

Pro-Library Version

The initial Term of this Agreement is set forth in Schedule [X]. This Agreement will not automatically renew. Renewal will require an affirmative written agreement between the parties addressing fees and terms for the renewal period. Licensor will provide Licensee with notice of the upcoming expiration at least one hundred eighty (180) days prior to expiration, together with proposed renewal terms. Licensee's failure to respond will not constitute renewal.

Reasonable Fallback

The initial Term of this Agreement is set forth in Schedule [X]. This Agreement may renew for successive terms of one year each, at the same fees and terms then in effect (subject to any fee escalators permitted under the Fees and Escalators provisions of this Agreement), unless either party provides written notice of non-renewal at least ninety (90) days prior to the end of the then-current Term. Licensor will provide Licensee with notice of the upcoming renewal at least one hundred twenty (120) days in advance, including any proposed changes to fees or terms.

Why?

Auto-renewal provisions are how libraries get locked into multi-year terms they did not specifically agree to. Long notice periods for non-renewal compound the problem by requiring decisions before the library has reviewed the upcoming year. Affirmative renewal, or auto-renewal at the same terms with shorter notice, are the typical landing points.

Watch For

- Auto-renewal at vendor's then-current fees and terms.
- Non-renewal notice periods of six months or longer.
- Auto-renewal for terms longer than one year.
- Notice requirements that are easy to miss.
- Renewal terms that incorporate vendor changes by reference.

Companion Doc Ref

Section 6.1 (Term, Renewal, and Termination)

Termination for Cause (TE-TC)

Theme

Term and Exit

Typical Section

Term / Termination

Common Pro-Vendor Language

Licensor may terminate this Agreement immediately upon any breach by Licensee, including any failure to pay any amount when due, without notice and without opportunity to cure. Upon such termination, all amounts paid shall be forfeited and Licensee shall have no further rights to the Licensed Content. Licensee may terminate this Agreement only for Licensor's uncured material breach following at least ninety (90) days' written notice. Material breach shall be defined at Licensor's reasonable discretion.

Pro-Library Version

Either party may terminate this Agreement for the other party's uncured material breach following thirty (30) days' written notice describing the breach and an opportunity to cure. Material breach means a breach that substantially impairs the value of this Agreement to the non-breaching party or that constitutes a violation of applicable law. If the breach cannot reasonably be cured within thirty days, the breaching party may submit a reasonable cure plan within the cure period and will have additional reasonable time to complete the cure. Disputes regarding whether a cure is satisfactory will be resolved under the dispute resolution provisions of this Agreement, and the breaching party will not be deemed in breach during the pendency of any such dispute.

Termination for nonpayment: Licensor may terminate this Agreement for nonpayment of undisputed amounts only after providing Licensee with at least sixty (60) days' prior written

notice and an opportunity to cure. Licensor will not terminate this Agreement for any amount in good-faith dispute.

Effect of termination: Termination for cause will not affect Licensee's rights to perpetual access for content for which fees were paid prior to termination.

Reasonable Fallback

Either party may terminate this Agreement for the other party's uncured material breach following sixty (60) days' written notice describing the breach and an opportunity to cure. Material breach means a breach that substantially impairs the value of this Agreement to the non-breaching party. If the breach cannot reasonably be cured within sixty days, the breaching party may submit a reasonable cure plan within the cure period and will have additional reasonable time to complete the cure.

Termination for nonpayment: Licensor may terminate this Agreement for nonpayment of undisputed amounts after providing Licensee with at least thirty (30) days' prior written notice and an opportunity to cure.

Effect of termination: Termination for cause will not affect Licensee's rights to perpetual access for content for which fees were paid prior to termination.

Why?

Termination for cause covers three related issues: material breach generally, termination for nonpayment specifically (which has unique timing concerns for libraries with procurement-driven payment cycles), and the consequences of termination for previously paid content. Symmetric cure periods, defined materiality, and dispute carve-outs prevent termination from becoming a one-sided leverage tool. The preservation of perpetual access rights for paid content is essential, because the alternative is forfeiture of investment made before the dispute.

Watch For

- Asymmetric cure periods (longer for licensee than for vendor).
- Vendor sole discretion on materiality.

- Immediate termination without notice.
- No carve-out for disputed amounts in nonpayment termination.
- Forfeiture of all paid fees on termination.
- Termination consequences that affect perpetual access rights for content already paid for.
- Notice periods too short to complete library payment processes.

Companion Doc Ref

Section 6.1 (Term, Term Renewal, and Termination)

Termination for Convenience (TE-TV)

Theme

Term and Exit

Typical Section

Term / Termination

Common Pro-Vendor Language

Licensor may terminate this Agreement for convenience at any time, with or without cause, upon thirty (30) days' notice to Licensee. Licensee may not terminate this Agreement for convenience during the initial Term.

Pro-Library Version

Either party may terminate this Agreement for convenience upon ninety (90) days' written notice. If a party terminates for convenience, Licensee will receive a pro-rata refund of any prepaid fees for periods after termination. Licensor will not have a unilateral right to terminate this Agreement for convenience during the initial Term, except where required by upstream licensing changes; in such case, Licensor will provide as much advance notice as reasonably possible and will offer Licensee a pro-rata refund. Termination for convenience will not affect Licensee's perpetual access rights for content for which fees were paid.

Reasonable Fallback

Either party may terminate this Agreement for convenience upon one hundred twenty (120) days' written notice. If a party terminates for convenience, Licensee will receive a pro-rata refund of any prepaid fees for periods after termination. Termination for convenience will not affect Licensee's perpetual access rights for content for which fees were paid.

Why?

Convenience termination rights are commonly asymmetric in vendor templates, with the vendor able to exit easily and the library locked in. Mutual rights with reasonable notice are the appropriate baseline. The Pro-Library Version restricts the vendor's convenience termination during the initial Term, which is the stronger ask; the Reasonable Fallback gives both parties the same right at one hundred twenty days. Pro-rata refunds are essential to ensure that termination does not become a forfeiture mechanism.

Watch For

- Asymmetric convenience termination rights (vendor for convenience, licensee for cause only).
- Notice periods that vary by party.
- No pro-rata refund obligations.
- Termination effects extending to perpetual access rights.
- Vendor unilateral termination during the initial Term.

Companion Doc Ref

Section 6.1 (Term, Renewal, and Termination)

Assignment and Change of Control (TE-AC2)

Theme

Term and Exit

Typical Section

General / Assignment

Common Pro-Vendor Language

Licensee may not assign this Agreement, in whole or in part, without Licensor's prior written consent, which may be granted or withheld in Licensor's sole discretion. Licensor may assign this Agreement freely, including in connection with any merger, acquisition, sale of assets, or change of control.

Pro-Library Version

Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, which will not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement in connection with a merger, acquisition, or sale of all or substantially all of its assets, provided that the successor entity assumes all obligations under this Agreement, including perpetual access obligations, and provided that the assigning party gives the other party prompt written notice. Licensee may also assign or novate this Agreement in connection with library system consolidation, government reorganization, or consortial arrangements without Licensor's consent.

Reasonable Fallback

Neither party may assign this Agreement without the other party's prior written consent, which will not be unreasonably withheld. Either party may assign this Agreement in connection with a merger, acquisition, or sale of all or substantially all of its assets, provided that the successor entity assumes all obligations under this Agreement and the assigning party gives prompt written notice.

Why?

Asymmetric assignment provisions let the vendor sell or restructure freely while binding the library to the original counterparty. For public libraries and state-level institutions, this creates particular problems because the library may itself be reorganized through merger, consolidation, or governmental restructuring. Mutual assignment language with reasonable consent and assumption obligations is the standard landing.

Watch For

- One-way assignment rights for the vendor.
- Vendor sole discretion on licensee assignments.
- No successor assumption requirement.
- No notice requirement for vendor assignment.
- No carve-out for library system consolidation or government reorganization.

Companion Doc Ref

Section 6.2 (Assignment and Change of Control)

DISPUTE RESOLUTION CLAUSES

Governing Law and Venue (DR-GL)

Theme

Dispute Resolution

Typical Section

General / Dispute Resolution

Common Pro-Vendor Language

This Agreement shall be governed by the laws of [Licensor's jurisdiction or a jurisdiction with no rational connection to either party]. All disputes shall be resolved exclusively in the courts of [that jurisdiction], and Licensee waives any objection to venue, forum non conveniens, or personal jurisdiction. Licensee waives the right to a jury trial and the right to participate in any class or representative action. Licensee waives any sovereign or governmental immunity it may have, to the extent permitted by law.

Pro-Library Version

This Agreement will be governed by and construed in accordance with the laws of [Licensee's home jurisdiction], without regard to its conflict of laws principles. Any dispute arising out of or related to this Agreement will be brought exclusively in the state or federal courts located in [Licensee's home county or district], and each party consents to personal jurisdiction and venue in such courts. Licensee does not waive any sovereign or governmental immunity it may have under applicable law.

Reasonable Fallback

This Agreement will be governed by the laws of [a mutually agreed jurisdiction, typically Licensor's or a neutral commercial jurisdiction such as New York or Delaware], provided that any consumer protection, privacy, accessibility, public records, or similar laws applicable to Licensee in its home jurisdiction will continue to apply notwithstanding this choice of law. Disputes may be brought in the state or federal courts of either party's home jurisdiction. Licensee does not waive any sovereign or governmental immunity it may have under applicable law.

Why?

Governing law and venue determine the practical cost of enforcement. Public libraries and state institutions have additional concerns: local public records laws, accessibility requirements, sovereign immunity, and procurement rules that should not be displaced by contractual choice of law. The non-waiver of immunity is essential for state institutions and most government licensees.

Watch For

- Choice of law combined with venue that strips away local protections.
- Mandatory arbitration paired with remote venue.
- Class action and jury trial waivers (often grouped with venue clauses).
- Waivers of sovereign or governmental immunity (which may be impermissible for public licensees regardless of contract language).

Companion Doc Ref

Section 7.1 (Governing Law and Venue)

Dispute Resolution Procedures (DR-DR2)

Theme

Dispute Resolution

Typical Section

General / Dispute Resolution

Common Pro-Vendor Language

Any dispute arising under this Agreement shall be resolved by binding arbitration administered by [vendor-chosen arbitration provider] under its commercial rules. The arbitration shall be conducted in [vendor's jurisdiction]. Licensee waives the right to a jury trial and the right to participate in any class or representative action. The arbitrator's decision shall be final and binding.

Pro-Library Version

The parties will first attempt to resolve any dispute through informal good-faith discussions between designated representatives. If the dispute is not resolved within thirty (30) days, the parties will attempt mediation with a mutually agreed mediator. Either party may proceed to court at any time, in the venue specified by the Governing Law and Venue provisions of this Agreement. The parties do not agree to mandatory arbitration. Neither party waives any right to a jury trial. Neither party waives any right to participate in class, representative, or collective actions, except as specifically required by law.

Reasonable Fallback

The parties will first attempt to resolve any dispute through good-faith discussions between designated representatives. If the dispute is not resolved within thirty (30) days, the parties may proceed either to non-binding mediation or to court. Either party may seek injunctive relief in court at any time to address irreparable harm. Disputes that proceed to litigation will be venued in accordance with the Governing Law and Venue provisions of this Agreement.

Why?

Mandatory arbitration in vendor-friendly venues effectively forecloses meaningful dispute resolution for many library licensees. Class action waivers, while increasingly enforced, may be inconsistent with the public interest character of library service. The non-arbitration approach with mandatory pre-litigation discussion and optional mediation provides structure without giving up court access.

Watch For

- Mandatory arbitration in any form.
- Vendor-chosen arbitration providers.
- Arbitration venue in vendor's jurisdiction.
- Class action and collective action waivers.
- Confidentiality of arbitration that prevents the library from sharing information about disputes with peers.

Companion Doc Ref

Section 7.1 (Dispute Resolution Procedures)

GOVERNANCE AND CHANGE MANAGEMENT CLAUSES

Unilateral Amendment and Incorporated Terms (GC-UA)

Theme

Governance and Change Management

Typical Section

General / Amendment

Common Pro-Vendor Language

Licensor may modify this Agreement, including its terms, pricing, and use restrictions, at any time by posting an updated version to its website or by updating any policy, terms of use, or service terms referenced herein. Continued use of the Licensed Content following such posting shall constitute Licensee's acceptance of the modified terms.

Pro-Library Version

This Agreement may be amended only by a written instrument signed by authorized representatives of both parties. No terms, conditions, policies, or other documents referenced by URL, hyperlink, or incorporation by reference will modify, supplement, or supersede this Agreement unless expressly attached as an exhibit and signed by both parties. Any click-through, browse-wrap, or platform terms of service will not bind Licensee or its Authorized Users to terms inconsistent with this Agreement. Licensor may not require Licensee or Authorized Users to agree to additional terms as a condition of access to the Licensed Content.

Reasonable Fallback

This Agreement may be amended only in writing signed by both parties. Licensor may update technical documentation, support policies, and operational procedures from time to time, provided that no such update will materially diminish Licensee's rights or materially increase Licensee's obligations under this Agreement. In the event of any conflict between this Agreement and any other Licensor document, this Agreement will control. Click-through or browse-wrap terms encountered by Authorized Users in the course of accessing the Licensed Content will not modify this Agreement and will not bind Licensee.

Why?

Unilateral amendment language paired with incorporation by reference is how negotiated agreements get rewritten after signing. The vendor updates its Terms of Use, the agreement incorporates those Terms by reference, and negotiated provisions become the starting point rather than the agreement. The click-through and browse-wrap carve-out is particularly important for library licensees because patrons may encounter such terms without any library negotiation.

Watch For

- Hyperlinks anywhere in the agreement to documents not attached.
- Acceptable Use Policy, Privacy Policy, or Service Terms referenced without copies attached.
- Update mechanisms that give no termination right for objections.
- Vendor-side update rights paired with automatic renewal.
- Click-through requirements imposed on patrons at point of use.

Companion Doc Ref

Section 8.1 (Amendment and Incorporation)

Notice Provisions (GC-NO)

Theme

Governance and Change Management

Typical Section

General / Notices

Common Pro-Vendor Language

Notice to Licensee shall be effective when sent by Licensor by any means, including email, posting to the platform, or posting to Licensor's website. Notice to Licensor shall be by certified mail to Licensor's registered address and shall be effective only upon Licensor's actual receipt and acknowledgment.

Pro-Library Version

All notices under this Agreement will be in writing and delivered to the addresses set forth in this Section. Notice will be effective: (i) on receipt if delivered personally; (ii) on the date confirmed if sent by certified mail or recognized overnight courier; or (iii) on the next business day after sending if delivered by email to a designated notice email address with confirmation of receipt requested. Notice by posting to a website or platform is not effective for purposes of this Agreement. Each party may update its notice contacts by notice to the other party.

Reasonable Fallback

All notices under this Agreement will be in writing and delivered to the addresses set forth in this Section. Notice will be effective: (i) on receipt if delivered personally or by recognized

overnight courier; (ii) on the third business day after sending if delivered by certified mail; or (iii) on the next business day after sending if delivered by email to a designated notice email address. Each party may update its notice contacts by notice to the other party.

Why?

Notice provisions are often overlooked but they determine when amendments, terminations, breaches, and renewals are effective. Vendor templates that allow notice by posting can make the vendor's communications effective without the library knowing. Mutual notice requirements with defined channels protect both parties and create a paper trail.

Watch For

- Asymmetric notice mechanisms (vendor by posting, licensee by certified mail).
- Notice effective without actual receipt. No requirement to update notice contacts.
- Notice to email addresses that are not specifically designated.
- Notice provisions that exempt 'operational communications' from formal notice requirements.

Companion Doc Ref

Section 8.2 (Notices, Audits, and Integrations)

Audit Rights (GC-AR)

Theme

Governance and Change Management

Typical Section

General / Compliance

Common Pro-Vendor Language

Licensor shall have the right, upon notice, to audit Licensee's compliance with this Agreement, including by inspecting Licensee's records, systems, and operations. Licensee shall cooperate with any such audit and shall bear the cost of any audit revealing non-compliance. Licensor's audit rights shall extend to all Licensee operations, including those of any affiliated library or member of any consortium of which Licensee is a part.

Pro-Library Version

Licensor may audit Licensee's use of the Licensed Content for compliance with this Agreement no more than once per year, upon at least thirty (30) days' prior written notice, during normal business hours, and at a time mutually convenient to the parties. Licensee will provide Licensor with reasonable access to its usage records directly relating to the Licensed Content. Licensor will bear all costs of any audit. The audit will not extend to any patron information protected by state library confidentiality laws or by professional ethics. Licensor may not audit any party that is not in direct privity with Licensor under this Agreement.

Reasonable Fallback

Licensor may audit Licensee's use of the Licensed Content for compliance with this Agreement no more than once per year, upon at least thirty (30) days' prior written notice, during normal business hours. Licensee will provide reasonable cooperation with the audit. Licensor will bear the cost of any audit, except that if the audit reveals material non-compliance, Licensee will bear the reasonable cost of that specific audit. The audit will not extend to any patron information protected by applicable law or by Licensee's professional ethics obligations. Licensor may not audit any party that is not in direct privity with Licensor under this Agreement.

Why?

Audit rights, if drafted broadly, can give the vendor an intrusive look at library operations and patron records. Tight scope (use of the Licensed Content only), reasonable notice, single-annual frequency, exclusion of protected patron information, and a privity restriction are essential. The privity restriction prevents the vendor from using audit rights to reach consortium members or affiliated libraries that have no direct contractual relationship with the vendor.

Watch For

- Audit rights extending beyond use of the Licensed Content.
- Multiple audits per year permitted.
- No notice requirement.
- Licensee-borne costs regardless of findings.
- Audit rights extending to parties not in direct privity.
- No carve-out for protected patron information.

Companion Doc Ref

Section 8.2 (Notices, Audits, and Integration)

Entire Agreement and Order of Precedence (GC-EA)

Theme

Governance and Change Management

Typical Section

General / Integration

Common Pro-Vendor Language

This Agreement, together with all schedules, exhibits, Licensor policies (including without limitation those available at Licensor's website), and any other documents referenced herein, constitutes the entire agreement between the parties. In the event of any conflict, Licensor's standard policies shall control.

Pro-Library Version

This Agreement, together with the schedules and exhibits expressly attached, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior agreements, communications, and representations. No external policies, terms of use, or other documents will be incorporated into this Agreement except those expressly attached as exhibits. In the event of any conflict between this Agreement and any exhibit, the body of this Agreement will control. In the event of any conflict between this Agreement and any external Licensor policy, this Agreement will control.

Reasonable Fallback

This Agreement, together with the schedules and exhibits attached, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior agreements and representations. In the event of any conflict between this Agreement and any exhibit, the body of this Agreement will control. In the event of any conflict between this Agreement and any other Licensor document or policy, this Agreement will control.

Why?

Order of precedence determines what happens when the agreement and other documents conflict, and incorporation by reference determines what other documents apply at all. Pro-vendor templates often make vendor policies controlling and incorporate broad external documents. The Pro-Library Version is restrictive about what gets incorporated and clear about what controls in any conflict.

Watch For

- Vendor policies stated to control in any conflict.
- Broad incorporation of website-available policies.
- No clear order of precedence among the agreement, exhibits, and external documents.
- References to ‘Licensor’s standard terms’ or similar without identification.

Companion Doc Ref

Section 8.2 (Notices, Audits, and Integration)

Appendix: Clause Bank Website

The *Digital Content Licensing Clause Bank* is also available as a searchable website.

All forms of the Clause Bank are meant for general reference, not legal advice. Leverage, jurisdiction, library type, and the specific resource being licensed all change what is reasonable in your situation. When in doubt, consult counsel.