



# NSLA eResources Consortium: Statement of principles guiding licence negotiation

as at 8 June 2023

## 1. Definition of users

1.1 In order to achieve its vision of providing access to all Australian residents to, commercial eResources, the Consortium aims to negotiate the broadest possible definition of 'User' consistent with a fair commercial return to Vendors. It is necessary to differentiate between 'all users' and 'all uses'. While access for all Australian residents is sought, the purposes for which the information can be used may be limited, providing the purposes are consistent with paragraph 2.1.

1.2 The Licence should provide for:

- access to Products for individual 'walk-in' Users of Members
- remote access for registered Users of Members.

The Licence should also describe any flexible access permitted.

## 2. Required rights for access and use

2.1 Any Licence entered into by the Members must recognise and should not restrict or abrogate the rights of the Members or their User community permitted under Australian copyright law, or comparable fair dealing provisions of the jurisdiction of the licence.

2.2 In particular, Licences should permit use at a minimum as allowed under Australian copyright law, including unlimited viewing, and downloading and printing for permitted purposes of education, research or private study.

2.3 Licences should permit the use of products for the delivery of library reference services. Including online and onsite reference services.

2.4 Licences should permit the transmission of copies of parts of electronic publications for the purpose of non-commercial document supply between a Member and a requesting library, or individual, for the purpose of research and study. A part may be an article contained in a periodical publication or a reasonable portion of a work. Permitted methods for transmission should include electronic transmission.



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2.5 The Licence should state clearly what access rights are being acquired by the Consortium:

- during the term of the Licence
- once the Licence expires or is terminated.

2.6 The Licence should include provision for compulsory transfer (novation or assignment) by the Vendor to any entity that takes over the business of the Vendor.

### 3. Archiving/preservation

3.1 The Consortium seeks perpetual access to electronic information to which it subscribes, including detail on the extent and method of access to backfiles.

The Licence should specify who has permanent archival responsibility for the Product and under what conditions the Consortium may access or refer Users to the archival copy.

Alternatively, the licence agreement should allow the Library to copy data for the purposes of preservation.

### 4. Pricing model

4.1 The preferred basis for pricing is either the number of concurrent Users or site licences, rather than population based.

4.2 Vendors should provide detail on their pricing structure and model.

4.3 Vendors should provide detail on the size and type of discount offered to the Consortium.

4.4 It is expected that any price increase would be no higher than CPI, unless there has been substantial product development or new content.

4.5 The Licence should permit additional Users for the purposes of running training sessions for users/staff, if there is a concurrent user session limit.

### 5. Authentication

5.1 Vendors should be flexible as to the mechanisms of authentication or validation of Users to suit the needs of Members. IP address authentication, with the ability to access Products at any staff or public PC in a library, is the preferred method wherever possible.

5.2 Vendors should provide support for on-site wireless access by Users with personal portable devices.

## 6. Service and support levels

6.1 The Licence should specify the Product performance and service levels the Consortium can expect from the Vendor and the Product, including technical interface and operation requirements. (Note: performance and service levels are likely to be Product-specific)

The Licence should include specific performance warranties at least as to reliable on-line availability and currency of data and/or text and should specify penalties for failure.

6.2 Resources must be available on a 24-hour, 7-day per week basis except for short scheduled downtimes announced with adequate notice to the Consortium.

The Vendor must restore access to the Product as soon as possible in the event of an interruption or suspension of the service.

6.3 The Licence should include provision for the Vendor to take all reasonable endeavours to ensure that the Server has adequate capacity and bandwidths to support the usage of the Consortium.

6.4 The Product should include a guarantee that the service will be supported on standard Web browsers. Web-based services should meet the W3C Web Accessibility Initiative guidelines.

6.5 Licences should specify the customer support services that will be provided. It is highly desirable that customer support is available as a minimum from 8am to 6pm (Australian Eastern Standard Time), Monday to Friday.

## 7. Monitoring/user statistics

7.1 Licences should guarantee the Consortium as a whole, as well as individual Members, the right and opportunity to measure use and to gather and exchange the relevant management information needed for collection development and Consortium purposes.

7.2 A Vendor should be able to generate for the Consortium as a whole and for every participating Member (including Public Libraries whose interests are being represented by a Member):

- composite data about the use of the Product;
- itemised statistics about information accessed, for instance, usage at both the journal title and article level; and use from each Member institution.

As a member of Counting Online Usage of Networked Electronic Resources (COUNTER), the Consortium preference is for vendors to provide COUNTER compliant usage statistics.

Alternatively, the Product should contain an administrative function enabling Members to easily generate their own statistics.

7.3 The routine collection of data by either party to a Licence should be predicated upon disclosure of such collection activities to the other party and to other Members and must respect and comply with laws and institutional policies regarding confidentiality and privacy.

## 8. Liabilities

8.1 Licences must not place liability on the Members for the misuse of content or the Product by the User. However, the Consortium will make reasonable efforts to prevent misuse or abuse by Users and will cooperate with Vendors to stop it should it occur.

8.2 The Licence should require the Vendor to give the Members notice of any suspected or alleged licence violations that come to their attention and allow a reasonable time for the Consortium to investigate and take corrective action, if appropriate.

## 9. Privacy

9.1 Licences must ensure that privacy of individuals using the Product is protected. The Vendor must not collect or record information about individuals using the Product, share any information about individuals with a third party, or use such information for marketing purposes. The Vendor should ensure compliance with the Commonwealth of Australia Privacy Act 1988 or comparable privacy laws of the jurisdiction of the vendor.

## 10. Administrative arrangements

10.1 All terms and conditions should be negotiated and clearly stated in the Licence, including:

- details on to whom the Licence is to be granted, i.e., Members, including any Public Libraries on whose behalf a State or Territory Library is acting;
- the number of simultaneous Users permitted;
- fixed price Fees including any applicable GST;
- the pro rata rate for libraries joining later in the subscription year or otherwise during the term of a Licence.

10.2 A Licence should contain all applicable terms and conditions.

10.3 The Licence should provide that any changes to the Licence are subject to prior agreement by licensed signatories.

10.4 Non-disclosure language should not preclude the Members from sharing pricing and other significant terms and conditions with other consortia, or for reasons of public accountability.

10.5 The Vendor should notify the Members, via the NLA, at least 30 days in advance of the following circumstances:

- any changes to the terms of the licence
- any substantial change to the content (other than normal updating)
- any change to technical specifications which may affect performance of the Product
- any changes that may affect access to the product.

The Licence should include a provision for the signatory Members to terminate the agreement with a pro-rated refund if any of the above changes render the Product less useful in a material respect to the Consortium.

10.6 The Licence should include provision for the signatory Members to terminate the agreement if the Vendor becomes insolvent or subject to receivership, liquidation or similar external administration.

10.7 A Licence should require the Vendor to defend, indemnify, and hold the Members harmless from any action based on a claim that use of the Product in accordance with the Licence infringes any patent, copyright trade-mark, or trade secret of any third party.

The Licence should include a procedure for dealing with infringements.

10.8 The Licence should include a warranty that the Vendor has the right to grant the Licence and that the Members' use of the resources contained in the Product will not infringe the Intellectual Property rights of any person.

10.9 The Licence should specify how and when updates to the Product will be provided and any fees associated with updates.

10.10 The governing law under which the Licence is made should be the law of the Australian Capital Territory or another Australian State or Territory.