

Contract Language Working Group

Federated Authentication Model License Agreement w/ Commentary

INTRODUCTION

SeamlessAccess has been working with libraries, resource providers, and technical infrastructure providers to make federated access a better experience for all stakeholders. SeamlessAccess builds and provides a central service related to the WAYF (Where Are You From) interface as its primary project, but has also undertaken other related federated authentication issues, from the creation of privacy preserving standards for entity attributes in the SAML process, and now this Contract Language Toolkit which is designed to bootstrap the contractual relationship between organizations and express responsibility for protecting user privacy.

Existing contract language between resource providers and libraries is almost universally focused on authentication and authorization via IP address. Reference to federated access is most often with language that refers to “secure networks”, and the authorization of users that are on said network to access resources. As more and more resources move to federated access, this language is no longer sufficient. Users will instead be on various local networks (home, coffee shop, etc.), and will no longer be proxied ‘into’ the organization's network in order to achieve access to resources. Therefore, contracts will need to begin to take into account federated access more explicitly with new language specific to the nature of federated access and recent developments around it.

The purpose of the Contract Language Toolkit is to define, share, and promote suggested language that may be used in contracts that include provisions for Federated Access. Typically, these contracts involve the library parent organization's Identity Provider (IdP) and electronic resources management staff as well as the Service Provider (SP) of the content or resource supplier. These provisions will hold both the Licensing Institution and the Resource Provider responsible for adherence to the Attribute Release Entity Categories applicable to the access of scholarly information resources and services in the context of federated authentication. The Technical Steering committee and the larger Seamless Access initiative have produced a

technical infrastructure that is able to protect end user privacy; this Toolkit will endeavor to ensure those protections are maintained via contractual means.

This *Model License Agreement* (“MLA”) has been prepared to assist information professionals, executives, and others who offer or acquire digital content in a library or similar setting. The intent of this MLA is to present a sound and realistic template of the key issues involved in negotiating a license to acquire or use digital content, specifically as it relates to the world of Federated Authentication & Authorization.

The MLA may be used as a template for a license or as a reference document that assists professionals in negotiating (or preparing to negotiate) digital content license agreements. While the MLA may be used in most digital content licensing situations, it has been drafted with a particular focus on licensing issues in higher education. The language is optimized for digital content received on a subscription basis. The MLA’s terms and conditions are based on United States common and statutory law, and references to U.S. law should be changed if used in other jurisdictions.

Several MLA provisions (including the jurisdiction and warranty provisions) will require modification in order to serve your organization’s purposes. If you plan to use the MLA as the basis for your license agreement, editors strongly recommend that you review and amend this model agreement with the assistance of a capable attorney or other licensing professional who has experience in dealing with commercial contracts, licensing, and institutional policy. This MLA does not constitute legal advice.

This MLA is Version 1.0 and is effective October 2022. It is based on LMLA Version 5.0: <http://liblicense.crl.edu/licensing-information/model-license/>. The LMLA Version 5.0 upon which this document is based is freely available for copying and redistribution for non-commercial purposes under Creative Commons license CC BY-NC 2.0US. Use under this license requires providing appropriate credit and a link to the license, and indicating if changes were made. For more information about terms of use see: <https://creativecommons.org/licenses/by-nc/2.0/>

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EDITORIAL NOTES

1. Editorial notes are enclosed in curly brackets and italicized like this: *{editorial notes in italics between curly brackets}*. These comments should not appear in an actual license agreement.
2. Where a clause requires one or more parties to enter information, those options are delineated by open, square brackets around bold like this: **[enter necessary information between square brackets]**. These comments should be replaced by the required text, without brackets, in an actual license agreement. In some cases, the MLA provides recommended text in square brackets.
3. Footnotes are used exclusively to list web site uniform resource locators (URLs), and are provided for convenience only. Neither the footnote markers nor the footnote text should appear in any final agreement. If your final agreement references external web sites, the URLs for those sites should be incorporated into the appropriate clauses.
4. The MLA is available as a Word document and in Adobe™ Portable Document Format (.pdf).
5. Following common contract drafting practices, terms are first defined and then capitalized thereafter. For example, “Authorized Users” is defined in Section 3 and is capitalized thereafter.
6. Differences between the original document (LMLA Version 5.0) and this one have been highlighted **using colored text**.

MODEL AGREEMENT

This License Agreement, along with any schedules or attachments (the “Agreement”), is made effective as of **[enter date]** (the “Effective Date”) between **[enter publisher’s official corporate name, street address, city, state, postal code, and country]** (the “Licensor”) and **[enter licensing institution’s official corporate or entity name, street address, city, state, postal code, and country]** (the “Licensee”).

In consideration of the mutual promises this Agreement contains, and other valuable and sufficient consideration, the Licensor and Licensee agree as follows:

1. GRANT OF LICENSE

1.1. Nature of Materials. The materials that are the subject of this Agreement are set forth in Schedule 1 (the “Licensed Materials”). *{Editors suggest that materials be described in a separate Schedule attached to the main Agreement. A template for Schedule 1 is provided for this purpose. Materials should be described with reasonable specificity, including distinguishing between purchased content, content under subscription, and content that is merely made accessible, particularly as these distinctions relate to perpetual rights in Section 8.}*

1.2. Grant of License. Licensor grants to Licensee non-exclusive, **[perpetual]**, worldwide access to and use of the Licensed Materials, and the right to provide the Licensed Materials to Authorized Users (which are defined in Section 3, below) in accordance with this Agreement’s terms and conditions. *{If the Agreement does not include perpetual rights to the Licensed Materials, the word “perpetual” should be omitted.}*

1.3 Ownership of Intellectual Property. Nothing in this Agreement shall be interpreted to transfer ownership of any copyright, trademarks or service marks from the Licensor or its suppliers to the Licensee or Authorized Users.

Licensor will include copyright, trademark and other notices in the Licensed Materials only where applicable, and all works protected by copyright will have a copyright notice displayed to clearly distinguish any copyright in the compilation from any copyright in the underlying works.

2. FEES

2.1 Fees and Payment. Licensee shall pay Licensor for the Licensed Materials pursuant to the terms set forth in Schedule 2, which is attached hereto. *{License editors suggest that these issues be negotiated and addressed in writing in a separate*

Schedule attached to the main Agreement. Pricing models vary widely and continue to evolve, including fees based on the number of Authorized Users or geographic Sites, periodic subscription fees or one-time purchase fees with or without annual maintenance charges, etc. Additionally, the payment term may be for less than one year, one calendar year, one fiscal year (typically July 1 through June 30) or for multiple years. For these and other reasons, the LMLA includes a template for Schedule 2; this should be edited to meet your specific needs.}

2.2 Notice of Price Increases. Licensors shall provide Licensee with a price list for all Licensed Materials no less than **[sixty (60)]** days prior to the end of the current term. *{If negotiating a license specifying a cancellation notice period in Section 6.2, Liblicense editors suggest revising this to read “no less than [sixty (60)] days prior to the cancellation notice date.”}*

3. AUTHORIZED USERS AND USES

3.1 Authorized Users. The Licensor and Licensee define “Authorized Users” as the following:

- a. The Licensee’s full-time and part-time students, regardless of their physical location;
- b. The Licensee’s full-time and part-time employees (including faculty, staff, affiliated researchers, and independent contractors), regardless of their physical location;
- c. Other individuals as specified in Schedule 3; and
- d. Patrons not affiliated with Licensee, who are physically present at Licensee’s site(s) (“Walk-ins”)

{Each institution should create their own Authorized User definition and tailor this Authorized Users clause accordingly. This method for authenticating walk-in users should be defined in Schedule 3}

3.2 Authorized Uses. The Licensee and Authorized Users may access or use the Licensed Materials for the following purposes:

- a. *Usage Rights.* Licensee and Authorized Users may electronically display, download, digitally copy, and print a reasonable portion of the Licensed Materials. Licensee may charge a reasonable fee to recover costs of copying or printing portions of Licensed Materials for Authorized Users.
- b. *Interlibrary Loan.* Licensee may fulfill requests from other libraries, a practice commonly called Interlibrary Loan. Licensee agrees to fulfill such requests in

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c. *Course Reserves*. Licensee and Authorized Users may use the Licensed Materials for print and electronic reserve readings in connection with specific courses of instruction offered by Licensee.

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3.3 No Diminution of Rights. Nothing in this Agreement, including but not limited to Section 3.2, shall be interpreted to diminish the rights and privileges of the Licensee or Authorized Users with respect to any of the Licensed Materials, including exceptions or limitations to the exclusive rights of copyright owners, such as fair use, under Section 107 of the U.S. Copyright Act. In the event that any content included in the Licensed Materials is in the public domain or has been issued under a Creative Commons or other open license, Licensor shall not place access, use or other restrictions on that content beyond those found in the open license, where applicable.

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4.1 Delivery. Licensor will provide or otherwise make available the Licensed Materials to the Licensee through telecommunications, network, or web-based connections between one or more of Licensor's physical, online, or virtual locations, and one or more of Licensee's authorized physical, online, or virtual locations. Licensor will use reasonable efforts to ensure that the Licensed Materials are accessible and interoperable with prevailing web browsers and internet access tools, including, at a minimum, the most recent two major versions (current version and one version prior) and all the associated releases for those versions. *{The MLA assumes web or other internet-based delivery; if the product involves alternative delivery methods such as locally installed hardware or software or delivery on physical media, this clause would require customization.}*

4.2 Access, Authentication and Authorization. Licensor will provide the Licensee and its Authorized Users with access to the Licensed Materials pursuant to the terms, conditions, and specifications set forth in Schedule 3, which is attached hereto. Licensor will use reasonable efforts to provide authentication methods that conform to current industry standards, and will cooperate with Licensee in the implementation of new authentication protocols and procedures as they are developed during the term of this Agreement.

{See Schedule 3 for editorial note regarding 4.2 and Federated Authentication.}

4.3 Restrictions. Licensor and Licensee agree to the following use and access restrictions on the Licensed Materials.

a. *Unauthorized Use.* Except as specifically provided elsewhere in this Agreement, Licensee shall not knowingly or intentionally permit anyone other than Authorized Users to use the Licensed Materials.

b. *Modification of Licensed Materials.* Licensee shall not modify or create a derivative work of the Licensed Materials without the Licensor's express, prior, and written permission, unless the Licensed Materials have been made available under an open

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d. *Commercial Purposes.* Other than as specifically permitted in this Agreement, Licensee may not use the Licensed Materials for commercial purposes. This restriction expressly prohibits the Licensee from selling Licensed Materials. For the avoidance of doubt, research conducted by Licensee and Authorized Users that is supported by a commercial entity shall not be considered use for commercial purposes.

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5.1 Licensor Performance Obligations. The Licensor will use reasonable efforts to ensure that its performance will meet or exceed industry standards and practices. Additionally, the Licensor agrees to the following performance standards.

a. *Availability of Licensed Materials.* The Licensor will make the Licensed Materials available to the Licensee and Authorized Users within **[enter time period]** of the Effective Date.

b. *Discovery of Licensed Materials.* Licensor shall make the Licensed Materials available through Licensee's Discovery Service System(s) for indexing and discovery purposes. Licensor shall provide to Licensee's discovery service vendors on an ongoing basis the citation and complete descriptive metadata (including all subject headings, abstracts, and keywords), and full-text content necessary to facilitate optimal discovery and accessibility of the content for the benefit of Licensee and Authorized Users. Discovery Service Systems are defined as user interface and search systems for discovering and displaying content from local, database and web-based sources.

c. *Persistent Linking.* Licensor will comply with the most current version of the OpenURL standard ([ANSI/NISO Z39.88](#)),^[3] and will provide a mechanism for persistent links to content.

d. *Online Terms and Conditions.* In the event that Licensor requires Authorized Users to agree to additional terms relating to the use of the Licensed Materials (commonly referred to as "click-through" or "clickwrap" licenses), or otherwise attempts to impose terms on Authorized Users through online terms and conditions invoked by the mere use or viewing of the Licensed Materials, such terms shall not materially differ from the provisions of this Agreement. In the event of any conflict between the click-through

terms or online terms and conditions and this Agreement, the terms of this Agreement shall prevail. For the avoidance of doubt, Authorized Users are not a party to this Agreement.

e. *Disabilities Compliance.* Licensors shall comply with the Americans with Disabilities Act (ADA), by supporting assistive software or devices such as large print interfaces, text-to-speech output, voice-activated input, refreshable braille displays, and alternate keyboard or pointer interfaces, in a manner consistent with the most recent version of the [Web Accessibility Initiative Web Content Accessibility Guidelines](#).^[4] Licensors shall provide to Licensee a current completed [Voluntary Product Accessibility Template](#) (VPAT)^[5] to demonstrate compliance with the federal Section 508 standards. If the product does not comply, the Licensee has the right to adapt the Licensed Materials in order to comply with federal and state law.

f. *Documentation.* Licensors will provide full, complete, and up-to-date help and operational documentation for Licensee and Authorized Users in an electronic format. Additionally, Licensors will make this documentation available in a manner that does not require Authorized Users to log in, use, or otherwise access the Licensed Materials.

g. *Support.* Licensors will provide activation and installation support, including assisting Licensee and Authorized Users with the implementation of any Licensors software. Licensors will offer reasonable levels of continuing support to assist Licensee and Authorized Users in use of the Licensed Materials. Licensors will make its personnel available by email and/or phone during Licensee's regular business hours, Monday – Friday, **[or enter another set of dates and times]** for feedback, problem-solving, or general questions and will respond in a timely manner **[or enter a specific time period]**.

h. *Training.* Licensors will provide to Licensee's staff appropriate training relating to the use of the Licensed Materials and any Licensors software. Licensors also will provide additional training to Licensee staff if made necessary by any updates or modifications to the Licensed Materials or any Licensors software.

i. *Updates.* Licensors will provide regular system and project updates to Licensee as they become available.

j. *Quality of Service.* Licensors shall use reasonable efforts to ensure that the Licensors's server or servers have sufficient capacity and rate of connectivity to provide the Licensee and its Authorized Users with a quality of service comparable to current standards in the online information industry in the Licensee's locale. Licensors shall use reasonable efforts to provide continuous service with an average of **[fill in time]**

percentage as appropriate, e.g., 99%] up-time per month. This **[fill in time percentage as appropriate]** up-time includes periodic unavailability due to server maintenance; software installation or testing; loading or making available additional Licensed Materials as they become available; and unavailability because of service or equipment failure outside the Licensor's control (including problems with public or private telecommunications services, or Internet nodes or facilities). Licensor may schedule brief unavailability periods, but will do so only where (1) it has given at least forty-eight (48) hour notice to Licensee, and (2) in ways and at times that minimize inconvenience to Licensee and its Authorized Users, regardless of when notice has been given.

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p. *Itemized Holdings List.* The Licensor will provide to the Licensee, prior to the beginning of the calendar year within the current term, an itemized holdings report that

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q. *Usage Statistics*. Licensor shall provide to Licensee **[monthly]** usage statistics for the Licensed Materials. Statistics shall meet or exceed the most recent project [Counting Online Usage of Networked Electronic Resources \(COUNTER\) Code of Practice Release](#),^[8] including but not limited to its provisions on customer confidentiality. When a release of a new COUNTER Codes of Practice is issued, Licensor shall comply with the implementation time frame specified by COUNTER to provide use statistics in the new standard format.

The Licensee's Identity Provider (IdP) may release the usage reporting attribute(s) as specified in Schedule 3 to allow the Licensor to provide granular usage statistics. Any data gathered by the Licensor in conjunction with any use of a usage reporting attribute defined by a REFEDS entity category shall be subject to the below limitations regarding third party access to said data. Any such reporting attribute shall only be released at the request of the Licensee.

Licensor shall not provide Licensee's usage statistics or attribute information in any form to any third party without the Licensee's written authorization, unless the third party owns rights in the Licensed Materials. In all cases, the disclosure of such data shall protect the anonymity of individual users as robustly as possible via de-identification of data and the confidentiality of their searches, and will comply with all applicable privacy laws. The Licensor shall not disclose or sell to other parties usage data or information about the Licensee or its Authorized Users without the Licensee's express written permission and if required the permission of the data subject, or as required by law.

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{Recommend that the provider's privacy policy and/or data retention policy be referenced by URL, at minimum, or included in full-text as Schedule 4. }

s. *Notice of the Use of Digital Rights Management Technology.* In the event that Licensors utilizes or implements any type of digital rights management (DRM) technology to control access to or usage of the Licensed Materials, Licensors will provide to Licensee a description of the technical specifications of the DRM and how it impacts access to or usage of the Licensed Materials. If the use of DRM renders the Licensed Materials substantially less useful to the Licensee or its Authorized Users, the Licensee may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement in Section 6, below.

t. *Use of Watermarking Technology.* In the event that Licensors utilizes any type of watermarking technology for any element of the Licensed Materials, Licensors agrees that watermarks will not reduce readability of content and will not degrade image quality. These watermarks shall not contain user-related information, including but not limited to an account number, IP address, and usernames. If digital watermarking technology is implemented, Licensors will notify Licensee at least thirty (30) days in advance of implementation, and Licensors will provide the technical specifications for the technology used. If the use of the watermarking technology renders the Licensed Materials substantially less useful to the Licensee or its Authorized Users, the Licensee may seek to terminate this Agreement for breach pursuant to the termination provisions of this Agreement in Section 6, below.

u. *Open Access Option.* In the event that Licensors offers an open access option to its authors, Licensors will report to Licensee **[annually]** the number of works (such as

articles) published under the open access option by all authors, and the number and list of the works by title with full citation by authors at Licensee's institution.

Licensor will enter into good faith discussions with Licensee concerning mechanisms by which the open access publication fees received by Licensor can offset the fees paid by Licensee and other subscribers of Licensed Materials, with a goal of reducing such fees in proportion to the revenue received through such open access publication fees.

5.2 Licensee Performance Obligations. The Licensee agrees to the following performance standards.

a. *License Terms Notice.* Licensee will use reasonable efforts to provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Materials is granted under this Agreement.

b. *Protection from Unauthorized Use.* Licensee will use reasonable efforts to restrict access to the Licensed Materials to Authorized Users.

c. *Maintaining Confidentiality of Access Passwords.* Where access to the Licensed Materials is to be controlled by use of passwords, Licensee will use reasonable efforts to inform Authorized Users that they should not divulge their numbers and passwords to any third party. Licensee will also use reasonable efforts to maintain the confidentiality of any institutional passwords provided by Licensor.

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a. *Notification of Unauthorized Use.* In the event the Licensee has notice of an unauthorized use of the Licensed Materials and cannot promptly remedy it, the Licensee shall immediately notify the Licensor.

In the event the Licensor has notice of unauthorized use of the Licensed Materials, the Licensor will immediately notify Licensee, and Licensee will cooperate with the Licensor to address the unauthorized use and avoid a recurrence.

In the event the Licensee does not respond within 3 business days to the Licensor's notification of unauthorized use, the Licensor may suspend access to the offending user and notify Licensee for investigation before the offending user's access to the Licensed Materials is reinstated. See also: Section 6.4 Termination for Breach for more information.

Any unauthorized use that is considered a breach of obligations under this Agreement shall be subject to Section 6.4, below, including the cure period.

6. TERM, RENEWAL AND TERMINATION

6.1 Agreement Term. This Agreement shall be in effect from the Effective Date until **[enter specific time and time zone]** on **[enter date]**.

6.2 Renewal. This Agreement shall be renewable at the end of the current term for a successive **[one (1) year]** term unless either party gives written notice of its intention to cancel **[thirty (30) days]** before expiration of the current term. In the event of a price increase for a subsequent term as provided for in Section 2.2, Licensee shall have no less than **[sixty (60) days]** from the date of notification of the price increase to notify Licensor of Licensee's intent to cancel or renegotiate. *{Liblicense editors suggest including this clause for a term with automatic renewal, and using the same number of days here in 6.2 as specified in 2.2. If your institution does not permit automatic renewal, strike this clause and renegotiate a new Agreement prior to the expiration of the current Agreement.}*

6.3 Early Termination for Financial Hardship. The Licensee may terminate this Agreement without penalty if sufficient content acquisitions funds are not allocated to enable the Licensee, in the exercise of its reasonable administrative discretion, to continue this Agreement. In the event of such financial circumstances, Licensee agrees to notify Licensor of the intent to terminate the Agreement as soon as is reasonably possible, but in any case, no less than **[enter a mutually agreeable number of days]** prior to next payment date. *{Liblicense editors suggest that this clause may be most appropriate for multiple year Agreements.}*

6.4 Termination for Breach. If either party believes that the other has materially breached any obligations under this Agreement, such party shall notify the other party of the alleged breach in writing following the notice provisions in Section 10.8.

If a material breach has occurred, the breaching party shall have **[thirty (30) days]** from the receipt of notice to use all reasonable means to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within **[thirty (30) days]**, the non-breaching party shall have the right to terminate the Agreement without further notice. Once this Agreement ends, by early termination or otherwise, the Licensor may terminate (or cause termination of) access to the Licensed Materials by Licensee and Authorized Users subject to Section 8, below. In addition, authorized copies of Licensed Materials made by Authorized Users may be retained for

educational purposes and used subject to the terms of this Agreement. See also Section 5.3 - Mutual Performance Obligations.

6.5 Refunds. In the event of early termination, except for termination for a material breach by the Licensee, Licensee shall be entitled to a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement.

7. DISPUTE RESOLUTION

[i] 7.1 Dispute Resolution. In the event of any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement that are not affected by the dispute.

{License editors have provided a more robust dispute resolution clause that includes mediation and arbitration options in an endnote for the MLA. Since many academic institutions cannot agree to mediation and arbitration, the editors choose to provide these options in the endnote rather than as a part of the main body of the document.}

8. PERPETUAL LICENSE AND ARCHIVES

{If the Agreement does not include perpetual rights to the Licensed Materials in Section 1.2, Section 8 should be omitted and subsequent sections renumbered. If perpetual rights are granted, clarify in Section 1.2 and 8.1 whether perpetual rights apply to all content accessible during the term of the Agreement, or only content subscribed to during the term of the Agreement.}

8.1 Perpetual License. Notwithstanding anything else in the Agreement, Licensors grants to Licensee a nonexclusive, royalty-free, perpetual license to use any Licensed Materials that were **[accessible or subscribed to]** during the term of this Agreement. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which Licensee shall have access to such Licensed Materials shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement. If the Licensors means of access is not available, the Licensee may provide substantially equivalent access to the Licensed Materials in accordance with Sections 8.2 and 8.3, below.

8.2 Archival Copy. Licensors shall provide to Licensee upon request, or Licensee may create, one (1) copy of the entire set of Licensed Materials to be maintained as an archival copy. The archival copy from the Licensors shall be provided without any DRM in

a mutually agreeable medium suitable to the content, and any fees for provision of copies will be on a time and materials basis only.

In the event the Licensor discontinues or suspends selling or licensing the Licensed Materials, the Licensee may use such archived Licensed Materials under the same terms as this Agreement. If Licensee has a backup copy of the Licensed Materials as defined in Section 3.2(l) *Backup Copy*, the backup copy may be used as an archival copy.

8.3 Third Party Archiving Services. Licensor and Licensee acknowledge that either party may engage the services of third-party trusted archives and/or participate in collaborative archiving endeavors to exercise Licensee's rights under this section of the Agreement. Licensor agrees to cooperate with such archiving entities and/or initiatives as reasonably necessary to make the Licensed Materials available for archiving purposes. Licensee may perpetually use a third-party trusted system or collaborative archive to access or store the Licensed Materials, so long as Licensee's use is under the same terms as this Agreement.

In the event the Licensor discontinues or changes the terms of its participation in a third-party archiving service, the Licensor shall notify the Licensee in advance, and shall in good faith seek to establish alternative arrangements for trusted archiving and perpetual access to the Licensed Materials.

9. WARRANTIES AND INDEMNIFICATION

9.1 Warranties. The Licensor warrants it has all necessary legal and equitable rights, permissions, and clearances to license the Licensed Materials to the Licensee for the purposes outlined in this Agreement, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright or other rights of any third party.

Licensor shall indemnify and hold harmless the Licensee and any Authorized Users for any losses, claims, damages, awards, penalties, or injuries they incur (including reasonable attorney's fees) which arise from any third party claim that alleges contract breach, copyright infringement, or other intellectual property infringement arising from the Licensee's or an Authorized User's use of or access to the Licensed Materials in accordance with the terms of this Agreement. Additionally, Licensor agrees that no liability limitation that may appear elsewhere in this Agreement applies to, overrides, or cancels this indemnification.

Licensor warrants that any physical object or medium that contains the Licensed Materials will be free from defects for a period of **[enter time period]** from delivery.

9.2 Warranty Disclaimers. Notwithstanding anything else in this Agreement, neither party shall be liable for any indirect, special, incidental, punitive, or consequential damages, including loss of data, business interruption, or loss of profits that arises from the use of the Licensed Materials, or inability to use the Licensed Materials.

Except for the express warranties stated elsewhere in this Agreement, Licensor disclaims any and all other warranties, conditions, or representations (express, implied, oral, or written), relating to the Licensed Materials or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability, or fitness for a particular purpose.

9.3 Indemnities. Licensor shall indemnify and hold harmless the Licensee for any losses, claims, damages, awards, penalties, or injuries (including reasonable attorneys fees) that arise from any alleged breach of the Licensor's representations and warranties made under this Agreement. This indemnity shall survive the termination of this Agreement.

10. MISCELLANEOUS PROVISIONS

10.1 Assignment and Transfer. Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party except as otherwise provided in Section 5.1(l) *Transfer or Acquisition of Titles*. Neither party to this Agreement may unreasonably withhold or delay such written consent.

10.2 Governing Law. This Agreement shall be interpreted and construed according to, and governed by, the laws of **[enter venue convenient to Licensor and Licensee]**, without regard to its conflict of laws rules. The federal or state courts located in **[enter venue convenient to Licensor and Licensee]** shall have jurisdiction to hear any dispute under this Agreement. *{For state institutions, the governing law and venue may be determined by policy, statute or the state's constitution. Liblicense editors recommend discussing governing law and venue requirements with your general counsel or an appropriate administrator.}*

10.3 Force Majeure. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control, including Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, labor strikes, and/or any other cause beyond the reasonable control of the party whose performance is affected.

10.4 Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written. For the avoidance of doubt, online terms and conditions as defined in Section 5.1(d) *Online Terms and Conditions* shall not modify the terms of this Agreement.

10.5 Amendment. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.

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

10.7 Waiver of Contractual Right. Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

10.8 Notices. All notices given pursuant to this Agreement shall be in writing and shall be sent to the person who is the signatory to the Agreement at the contract addresses noted in the signature section of this Agreement. All notices may be hand delivered, or shall be deemed received within **[enter time period]** after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile or electronic mail, confirmation copies must be sent by mail or by hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

10.9 Survivability. Sections 1, 3, 4.3, 7, 8, 9, 10.1, and 10.2 hereof, all indemnification obligations and perpetual license rights shall survive the expiration or termination of the Agreement.

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the Effective Date.

Licensor:

By: _____

Signature of Authorized Signatory for Licensors

Date

[Printed Name]

[Title]

[Address]

[Telephone Number]

[Email Address]

Licensee:

By: _____

Signature of Authorized Signatory for Licensee

Date

[Printed Name]

[Title]

[Address]

[Telephone Number]

[Email Address]

MODEL AGREEMENT

Schedule 1: Licensed Materials

A schedule dated **[enter date]** to the Agreement entered into on **[enter date]** between **[enter name of Licensor]** and **[enter name of Licensee]**.

{Liblicense editors suggest that some collections may need to be described at the title level, such as subscriptions to journals, where others may be described more generally. If perpetual rights are being negotiated, Liblicense editors recommend particular attention be given to clarifying content for which perpetual rights are granted and content that is made accessible during the term of the agreement, but for which no perpetual rights are included.}

The Licensed Materials that are the subject of this Agreement are:

[Describe licensed materials with reasonable specificity, including distinguishing between purchased content, content under subscription, and content that is merely made accessible, particularly as these distinctions relate to perpetual rights in Section 8. For example, list titles and dates, subscription periods, titles and content types included in an aggregated database, etc.]

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Schedule by their respective, duly authorized representatives as of the Schedule Date.

Licensor:

By: _____

Signature of Authorized Signatory for Licensor

Date

[Printed Name]

[Title]

[Address]

[Telephone Number]

[Email Address]

Licensee:

By: _____

Signature of Authorized Signatory for Licensee

Date

[Printed Name]

[Title]

[Address]

[Telephone Number]

[Email Address]

MODEL AGREEMENT

Schedule 2: Fees and Payment

A schedule dated **[enter date]** to the Agreement entered into on **[enter date]** between **[enter name of Licensors]** and **[enter name of Licensee]**.

{Liblicense editors suggest that fees and payment terms be negotiated and addressed in this Schedule and attached to the main Agreement. Liblicense editors recommend that both the applicable price and the basis on which the pricing is developed be described in this schedule. Pricing models vary widely and continue to evolve, including fees based on the number of Authorized Users or geographic Sites, periodic subscription fees or one-time purchase fees with or without annual maintenance charges, etc. Additionally, the payment term may be for less than one year, one calendar year, one fiscal year (typically July 1 through June 30) or for multiple years. Examples of all pricing models are beyond the scope of the MLA.}

TOTAL FEE: **[enter fee information]**

TERM COVERED BY PAYMENT: **[enter term]** *{The payment term may be for less than one year, one calendar year, one fiscal year (typically July 1 through June 30) or for multiple years.}*

PAYMENT SCHEDULE: **[enter invoice schedule]** All invoices will be paid within **[enter time period]** of receipt. *{Liblicense editors suggest thirty, forty-five, or sixty-day time periods may be appropriate depending on circumstances.}*

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Schedule by their respective, duly authorized representatives as of the Schedule Date.

Licensors:

By: _____

Signature of Authorized Signatory for Licensors

Date

[Printed Name]

[Title]

[Address]

[Telephone Number]

[Email Address]

Licensee:

By: _____

Signature of Authorized Signatory for Licensee

Date

[Printed Name]

[Title]

[Address]

[Telephone Number]

[Email Address]

MODEL AGREEMENT

Schedule 3: Access, Authentication and Authorization

A schedule dated [enter date] to the Agreement entered into on [enter date] between [enter name of Licensor] and [enter name of Licensee].

{SeamlessAccess.org editors recommend that the Licensor and Licensee negotiate the details of federated access with help from the [SeamlessAccess.org Federated Authentication Use Cases](#) document found [here](#). These Federated Authentication use cases and specifications may require the expertise of networking professionals, information security specialists, and/or the institution's chief information officer.}

ACCESS METHOD: Federated Authentication. Dependent upon the Entity Category or negotiated agreement, the following attribute(s) may be released to the Licensor from the Licensee:

- **Anonymous Entity Category**
 - <https://refeds.org/category/anonymous>
 - *Anonymous attributes*
 - *eduPersonScopedAffiliation*
 - *organizationId*
 - *eduPersonEntitlement*
- **Pseudonymous Entity Category**
 - <https://refeds.org/category/pseudonymous>
 - *Pseudonymous attributes*
 - *eduPersonScopedAffiliation*
 - *organizationId*
 - *eduPersonEntitlement*
 - *SAML pairwiseID*
- **Other Possible Attributes**
 - *Usage reporting attributes*
 - *eduPersonAnalyticsTag*

AUTHENTICATION and AUTHORIZATION:

- The authentication shall be handled by the Licensee's IdP as represented by the IdP's metadata in the Trust Federation: {An example: <https://idp.eduserv.org.uk/openathens>}
- The authorization shall be handled by the Licensor's SP as represented by the SP's metadata in the Trust Federation: {An example: [entityID=https://sdauth.sciencedirect.com/](https://sdauth.sciencedirect.com/)}

- During the term of this Agreement, Licensee and Licensor shall make reasonable efforts to cooperate in the evaluation and implementation of newly developed security and control protocols and procedures as they are developed as long as both parties agree to a set time-frame for evaluation and implementation. The parties shall also cooperate in the updating of the SP and IdP metadata as they change; should SP require update, notice will be provided to IdP at least three (3) months in advance of expected changes.

{Each institution should create their own Authorized User definition and tailor the Authorized Users clause accordingly.}

Method for Authorizing or Authenticating Walk-In Users

{This method will vary from organization to organization, and should be specified here. The below are given as examples but are not comprehensive.}

- **Authorization via account**
 - A shared account is provided to users in order to authenticate as an approved user, the details of which could vary broadly from organization to organization.
- **Authorization via device**
 - The device could be whitelisted via hardware address (MAC address or other hardware identifier).
- **Authorization via network (IP)**
 - The device could be authorized for access via fixed IP address.
- **Authorization via IdP Extension**
 - Pilot of this can be seen here:
<https://wiki.geant.org/display/AARC/Libraries+walk-in-user+pilot>

{Recommendation: neither party should commit to constant evaluation or extended implementation.}

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Schedule by their respective, duly authorized representatives as of the Schedule Date.

Licensor:

By: _____

Signature of Authorized Signatory for Licensor

_____ *Date*

[Printed Name]

[Title]

[Address]

[Telephone Number]

[Email Address]

Licensee:

By: _____

Signature of Authorized Signatory for Licensee

_____ *Date*

[Printed Name]

[Title]

[Address]

[Telephone Number]

[Email Address]

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- [1] <http://www.niso.org/workrooms/seru>
- [2] <http://liblicense.crl.edu/about-liblicense/contact-us/>
- [3] http://www.niso.org/apps/group_public/project/details.php?project_id=82
- [4] <http://www.w3.org/WAI/guid-tech.html>
- [5] <http://go.usa.gov/UjFA>
- [6] <http://www.uksg.org/transfer>
- [7] <http://www.niso.org/workrooms/kbart>
- [8] http://www.projectcounter.org/code_practice.html
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[i][i] Dispute Resolution alternative approach

{Liblicense editors have provided a more robust dispute resolution clause that includes mediation and arbitration options here. Since many academic institutions cannot agree to mediation and arbitration, the editors choose to provide these options in the endnote rather than as a part of the main body of the MLA. If you choose to use this more robust dispute resolution section, please substitute this 7.1 for the 7.1 found in the model license.}

7.1 Dispute Resolution. In the event any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement that are not affected by the dispute. If the Licenser and Licensee cannot resolve their dispute after reasonable effort and a reasonable period of time, the parties agree to resolve the dispute using one of the following methods in lieu of litigation. *{The mediation clause and arbitration clauses may be chosen together, or the arbitration clause may be chosen by itself.}*

a. *Mediation.* The Licenser and Licensee may submit their dispute to a neutral, non-binding mediation prior to the commencement of arbitration, litigation, or any other

proceeding before a trier of fact. The parties to the dispute or claim agree to act in good faith to participate in mediation, and to identify a mutually acceptable mediator. If a mediator cannot be agreed upon by the parties, each party shall designate a mediator and those mediators shall select a third mediator who shall act as the neutral mediator, assisting the parties in attempting to reach a resolution. The Licensor and Licensee will share equally in the cost of the mediator(s), and commit to completing at least four hours of mediation before seeking any other dispute resolution method, legal remedy, or equitable remedy. If the mediation is successful, its resolution will be documented by a written agreement executed by all parties. If the mediation does not successfully resolve the dispute or claim, the mediator shall provide written notice to both parties. At this point, the Licensee and Licensor may seek another alternative form of resolution of the dispute or claim, consistent with the remaining terms of this agreement and other legal rights and remedies, or commence litigation.

b. *Arbitration.* If mediation does not resolve a controversy or dispute between the Licensor and Licensee, the parties shall resolve the dispute by binding arbitration in accordance with the Commercial Arbitration Rules of the [American Arbitration Association](#). The parties shall select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties. All documents, materials, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than **[enter time period]** after the notice of arbitration is served.

The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The arbitrator(s) shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator(s) shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.