

Electronic Health Library of British Columbia License Agreement Overview

The British Columbia Electronic Library Network (BC ELN) and Electronic Health Library of British Columbia (eHLbc) updated their Model Licenses (Model) in September 2023. BC ELN and eHLbc now use the same license framework. The updated Model replaces the previous 2013 versions.

The process of updating the Model included a detailed comparison of language in the 2013 BCELN License to the 2021 Consortia Canada license, the 2022 COPPUL license, and the 2022 CRKN license. The BC ELN and eHLbc Model are similar in structure and language to licenses used by other Canadian Consortia. Several sections of the Model were enhanced, and new sections added, to reflect current technology and user rights expectations.

The Model is a framework that BC ELN and eHLbc have developed for negotiating licenses, based on best practices and licensing principles. The Model is the framework for all Consortium licensing and can also be used by Members for their own licensing. The Model is the basis for Master licenses with EBSCO and ProQuest Clarivate. In cases where vendors require their license, the Model serves as a valuable source of specific language to use in negotiating changes to the vendor license.

This overview is for informational purposes only and is not intended, and should not be taken, as legal advice.

The Model has the following sections:

Introductory Statements

The top of the license has three statements that begin with “Whereas”. These statements are general statements outlining the scope and reason for the license. New to the 2023 Model is a statement on relationships and responsibilities of the Consortium and Members. This is useful for vendors who are new to understanding the relationship of the Consortium in representing each Member in licensing.

Section 1: Definitions

This Section was expanded to ensure that all parties to the license have a common understanding of key terms used in the license. Definitions are also now presented in an alphabetized and labeled list for convenience. The reason for detailed definitions is to reduce the potential for misinterpretation. A defined term will appear in capitals throughout the license. Definitions may be removed if not applicable to the specific licensed materials.

The definition of Authorized Users lists all potential user groups in academic institutions, non-academic institutions, and walk-in users. Vendors may ask to remove some user groups, such as alumni or retirees, or provide clarification on Permitted Uses for specific user groups in Schedules or accompanying documentation.

Section 2: License Grant

The License Grant is the key clause in the license. In this section the vendor is granting rights to the Consortium and Members to use the licensed materials during the license term, and when applicable in perpetuity, for private study, research, education, distance learning, teaching, administrative use, and other scholarly and educational use.

The Grant section has a statement which guarantees Canadian Copyright rights will apply where there are broader rights provided under the Copyright Act of Canada. While a license binds the Consortium and the vendor in a legal relationship, that relationship should be governed under provincial and federal laws. The Model emphasizes Canadian law rather than US law referenced in most vendor licenses. Members cannot be bound by United States (US) or other international laws. The fair use doctrine of the US Copyright Act and fair dealing in the Canadian Copyright Act are not equivalent or

interchangeable. If the vendor will not agree to specifically stating “Canadian law”, the US law clause should be removed and “remain silent” or language changed to state “applicable laws” will apply.

Section 3: Permitted Uses

Section 3 provides library staff with details on how the licensed materials can be used in their local institutions. Vendors may ask to remove or provide clarification on limitations to Permitted Uses in Schedules or accompanying documentation.

Members and Authorized Users may use single items of parts of the licensed materials to:

- Search, retrieve, display, download, print, save, and view.
- Alter or modify formats to meet Accessibility requests of Authorized Users.
- Create classroom handouts in print or electronic format.
- Incorporate or create persistent links in electronic course management systems and electronic reserves.
- Use for textual analysis and visual mapping for private, educational and research activities.
- Fulfill Interlibrary loan requests. Note US CONTU rules are not used in the Canadian context.
- Create persistent links to be used for private, educational and research activities.
- Use single items or parts, in print or electronic format, to fulfill enquiries for medical information purposes or to share with a colleague.
- Store in bibliographic reference management systems and institutional repositories.
- Incorporate in other documents for private, educational and research activities.
- Use for training and marketing activities.
- Share anonymous usage data with other Members and Consortium.

Section 4: Prohibited Uses

None of the Permitted Uses in Section 3 are allowed for Commercial Use. Note that cost recovery for printing or photocopying is not a commercial activity. Permitted Uses are always based on limited use of single items or part of the licensed materials for private, education or research uses. Public redistribution, removal of Copyright notices, or systematic downloading is prohibited. Excessive use of licensed materials will trigger a breach response from the vendor and access will be suspended.

Section 5: The Licensor’s Undertakings

Since the 2013 Model there have been significant changes in technology and service expectations, especially around access, authentication, and privacy of Authorized Users’ information. There are 15 clauses in this Section that detail what we expect the vendor to provide. Some of these may not be relevant for specific licensed materials but the goal of the Model is to provide the breadth of service requirements. Vendors may ask to remove or provide clarification in Schedules or accompanying documentation. Also review the additional new **Section 7: Mutual Obligations of Consortium and Licensor**, with an additional 3 clauses for vendor service.

Vendors are expected to ensure:

- Access on the start date of the term.
- Sufficient information is provided for Members to provide access, including how to “brand” the Licensed materials with the Member information.
- Platform has capacity and bandwidth to support use, including platform access 98% of the time on the most recent two releases of standard Web browsers. Routine maintenance should be communicated and there are guidelines now for non-compliance of adequate access.
- Privacy of access and authentication, under prevailing standards, including providing information about any

digital watermarking or DRMs used.

- Licensed materials conform to accessibility standards (or Section **3.2: Alter or Modify** applies).
- Information is provided about click-through license terms that may appear on the vendor platform.
- Additional service components are provided including access via Discovery systems, MARC records, title lists, and usage data.
- Information is provided about modifications and preservation of licensed materials.
- Authors self-archiving rights and Open Access revenue tracking (these clauses may not be applicable for many Licensed materials)

Section 6: The Consortium's Undertakings

This Section ensures vendors that the Consortium and Members understand their responsibilities to use reasonable efforts to communicate details of **Section 3: Permitted Uses** and **Section 4: Prohibited Uses to Authorized Users**.

Throughout the license, there are details on how Members use reasonable efforts to inform users of the rights and restrictions of using the Licensed materials. Members cannot be held responsible for exceptional misuse.

There is also a new clause stating that changes to authentication details or contact information should be communicated to the Consortium to ensure the Licensor has current details.

Section 7: Mutual Obligations of Consortium and Licensor

This new section for mutual obligations has three clauses to recognize the shared responsibilities for ensuring privacy and protection of data, the process for communicating to resolve potential misuse, and a guiding statement to work together in the event of local loading requests. Clauses **7.3: Notice of Unauthorized Use or Breach**, **9.5: Early Termination for Breach**, and **10.13: Dispute Resolution**, outline how the Consortium, Member and vendor will work together to identify and resolve any breaches.

Section 8: Fees and Section 9: Term and Termination

Together, **Section 8: Fees**, **Section 9: Term and Termination**, and **Schedule 1: Business Terms**, provide language flexibility to deal with the unique business management of perpetual or subscription licensed materials.

New clauses have been added to ensure a common understanding of post-termination rights. Note that 60 days notice should be the required notification term for any aspect of the licensing relationship, rather than 30 days notice which most vendors assume.

Clause **9.8: Early Termination by a Member** handles the situation where a Member cancels a product in a single year or multi-year term license. The termination by one Member will not result in a penalty to the Member or the Consortium deal and should not result in higher fees for the other Members remaining in a deal.

Section 10: General

General is important for ensuring the vendor acts within their legal rights and the Consortium is protected within their legal rights. This section provides a framework for how legal communication and disputes will be handled. Clause **10.14: Governing Law and Venue** is important in stating that *"This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia, and the laws of Canada applicable therein, including the applicable provincial laws regarding Freedom of Information and Protection of Privacy, and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the courts of British Columbia and Canada."* If the vendor will not accept this, the law and venue should be removed to remain silent.

The vendor indemnifies and holds the Consortium and Members harmless from any loss, damage, costs, liability and expenses and that indemnification survives the termination of the license. Because of the nature of provincial law and the structure of the Member organizations, Consortium and Members cannot indemnify the vendor. If a vendor has a license with a statement that the Consortium indemnifies the vendor, this should be removed to remain silent.

Section 10 does not include any statement about not disclosing the details of the license. The Model is silent on any statement about non-disclosure of license or financial terms. Canadian Consortium do not sign licenses with non-disclosure clauses, except in exceptional cases which most often occur with vendors who provide medical or business content. Sharing of pricing and terms and conditions with the Consortium and with other Canadian Consortia is important in the Canadian context.

The Model has two new clauses, **10.7: Deemed Member Benefit** and **10.8: Consortial Offer**. These clauses emphasize the principle of equity so that all benefits, warranties, and other terms of the conditions within a Consortium license or on a direct Member license are available for existing and future deals. The idea is to address the following disparities in negotiations:

- Where a Member gets a better deal than the Consortium and the Consortium cannot benefit
- Where the Consortium gets a better deal than a Member and the Member cannot benefit

Schedules, Amendments, and Exhibits

The Schedule in the Model provides detailed instructions, in highlighted italics, on how to handle the additional components of the license beyond the body of the license terms.

There is a detailed template for the Business Terms **Schedule 1: Business Terms** should be updated for each new contract term and signed by both parties.

An Amendment is added for changes to the language of the license instead of updating the entire license. The Model may remain as the license with a vendor for years, but there may be some updates needed to specific clauses as technology or service expectations change.

An Exhibit is used to include some language added to the license that won't change but is unique, for example specific technology details for particular licensed materials.

Signatures and dates

Once the negotiations on a license are finalized, the new license will be dated at the top of the license. Any accompanying Schedules, Amendments, or Exhibits will be dated. The main body of the license is signed as are the accompanying Schedules, Amendments, and Exhibits. Any future updates to the accompanying documents should be dated and signed and attached to the main license.

A license is not legally binding unless signed by both parties. Signatures should be redacted before being posted on any public facing interface.