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Biz of Acq — Negotiating with a Contract Addendum

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Column Editor's Note: *Contract negotiation is an ongoing issue for many libraries and Bob's article offers an excellent means of handling the process via an addendum. Further, his description of how he went about setting this up, working with both his University Attorney and Library Director, will be invaluable to anyone wishing to set up a procedure for handling this complex process. — MF*

The contract negotiating process is challenging for any librarian. However, by incorporating a contract addendum into the process, I've found this instrument effectively manages my contract review and negotiating process. It saves time, insures that key issues are addressed in a legally binding document, and is flexible enough to speak to future changes. Vendors will respond differently when you reply with the addendum proposal. However, for the most part, I've found that by providing them with the reviewed contract and addendum early on in the negotiating process, I've reduced the time needed to move forward with finalizing the contract and implementing the service. Finally, the addendum proved sufficiently portable, that, after consulting with the **Eastern Michigan University** attorney, I adopted and implemented it at **EMU's Halle Library** where I currently serve as Collection Development Librarian.

I've been working with contracts for online resources since the mid 1990s. After trying a variety of techniques, in 2002 I developed and deployed a contract addendum at the **University of Michigan Kresge Business Administration Library**. The addendum's intent was not to replace the vendor's contract. Instead it insured that specific elements important to the library and university were addressed during negotiations. It also does not mean the library obtained all of its terms exactly as they are listed. Instead, compromises were negotiated and in some cases "business decisions" about the level of risk involved drive whether to insist that a specific element be included, revised, or dropped. Finally, the addendum identifies individual and shared responsibilities and obligations for both the library and the vendor.

Implementing the addendum process is not difficult. In my case, before developing the addendum, I reviewed earlier licenses' terms and identified key library issues I wanted included. I then honed my skills by enrolling in a two day licensing class, which led me to review the **Yale**

University LibLicense Site. I found the **Yale** site especially helpful as it conveniently assembled information about licensing terms, vocabulary, licensing Websites, Web-links to publisher licenses, etc. The "Licensing Terms and Descriptions" section was useful in clarifying legal concepts and raising important points to watch for when reviewing license agreements. The site also offered a free downloadable software package which essentially built an agreement as you answer specific licensing questions. While time consuming to complete, in the end, this tool broadened my licensing knowledge as well as sharpened my contract skills. Using this combined experience, I developed the draft addendum which I reviewed with the Library Director and then took to the University Attorney.

Institutional attorneys are open to working with librarians on licenses. I believe that by being proactive and seeking their advice about both the process and the addendum's content worked to my advantage. At **EMU**, the Library Director arranged for and attended my initial meeting with the university attorney where I provided a copy of the addendum and described its advantages and how I used it at my previous position. I offered to work closely with his office to see how we could implement the model here. Within a few weeks of reviewing the document and after adding terms important to the university, we launched the program. As my proficiency grew in reviewing licenses, I've been able to identify potential problems early on, saving the attorney's time. He came to view me as a partner in this process, as one who takes an interest in protecting the institution as well as one providing library resources for the university community.

Once a decision is made to subscribe to an online resource, in addition to obtaining the contract, I also identify the vendor's negotiator, legal officer, and authorized signer. Depending upon the contract there could be up to three vendor contacts. Knowing this enables me to direct questions/clarifications to the right person. I then benchmark the contract/terms of use against our addendum. Any items not conforming to our terms are reviewed to ensure that our addendum language addresses it. For example, many contracts contain non-disclosure agreements, meaning you may not share the terms of the contract. However, as a public institution, **EMU** is required to comply with **Freedom of Information Requests (FOIA)**. Therefore, when seeing a non-disclosure

statement we always include a section stating we will comply with **FOIA** requests for this document.

I send my suggested changes to the University Attorney where we both work closely to review the document. After incorporating the attorney suggested addendum changes to bring the contract into "acceptable legal form," I send the contract and revised addendum to the vendor for his review, whereupon we negotiate the final document. On occasion if an issue is intractable, I direct the vendor or their attorney to work directly with the university attorney to finalize the language.

The University Librarian signs the finalized agreement, which is sent to the vendor for his signature. When the counter-signed documents are returned, I covert them into PDF format along with a coversheet summarizing the terms of the agreement (i.e., vendor, product, start date/end date, amount, and vendor contacts). I then email this document to the vendor, the Library Director's office, and the University Attorney's office for their files. All original documents are retained in the Collection Development Librarian's office.

Over the years my addendum has evolved to reflect changes and developments in information technology. I now include statements about use data being Counter Compliant and publisher supplied "Post Cancellation Access" to content which is important with many print journal subscriptions being replaced by online equivalents. After **EMU** became a member of **Portico**, I incorporated a statement encouraging vendors to participate in that archive as well as **LOCKSS**. Currently, with the number of journal titles sold between publishers accelerating, I'm developing language encouraging vendors to participate in "Project Transfer."

In the future, libraries and vendors may agree upon a set of licensing terms eliminating the need for contracts, addendums, and negotiations. However, until that time, I've found the contract addendum an efficient and effective strategy to systematically address library and vendor licensing issues. 🐻

Web Resources

Yale's LibLicense: Licensing Digital Information — <http://www.library.yale.edu/~llicense/>

University of California License Agreement for "electronic information published by publisher" — www.cdlib.org/vendors/CDLModelLicense.rtf

Project Transfer — <http://www.uksg.org/transfer>