TRLN Guide to Negotiating Accessibility in E-Resource Licenses

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Published:

December 2022

About this Guide

In 2021, the Triangle Research Libraries Network (TRLN) E-Resources Management Working Group revised its licensing principles to include updated accessibility language to better reflect the member libraries' values and priorities around collections and e-resources. As the group reviewed model language and determined which iterations and clauses would be most ideal, discussions ensued around the practicality of engaging in conversations with vendors. While the most optimal model licensing language is robust and specific, in reality, content and service providers typically request edits to preferred language. Library staff involved in licensing work need to understand the rationale behind the elements included in the model language, the implications of omitting or softening the components of their preferred language, and how they can advocate for their libraries' accessibility language needs with providers.

This resource is meant to serve as a reference tool for library staff involved in licensing and e-resources management as they advocate for strong accessibility assurances in their formal contracts with service and content providers. Each component of TRLN's preferred accessibility language has been broken down into various components and discussed. The components include: a reference to the Americans with Disabilities Act (ADA), a reference to Section 508, a reference to the Web Content Accessibility Guidelines (WCAG), the provision of a VPAT, the institution's right to modify content to make it accessible for end users, and the provider's responsibility to respond to and remedy accessibility-related complaints and issues.

For each component, this resource includes example language from various model agreements, an explanation of the utility and importance of that language component, the component's relationship to other parts of a standard agreement, questions to determine if this component is necessary at your institution or for a particular product type, and how to advocate for this language in conversations with providers.

Disclaimers:
- Many of the justification statements are similar for various components of the model language in this reference tool and the duplication in this document is intentional.
- The terms institution, organization, and licensee are used synonymously throughout.
- The terms vendor, publisher, provider, and licensor are used synonymously throughout.

- As with all licensing, it's important to understand an institution's licensing environment to identify where risk boundaries are and to understand the nature of the resources covered by a proposed license. Reflection questions are included in Appendix 2 to help library staff consider these issues locally.
- This document is not intended to provide legal advice. Interpretation of the laws pertaining to and governing digital accessibility may differ by state and institution. It is critical to consult with the local office of accessibility, counsel's office, and/or any in-house attorneys in negotiating licensing agreements.

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Preferred Citation

Ashmore, B., Farrell, K., Kilb, M., Martin, V., Wickes, A. (2022). *TRLN Guide to Negotiating Accessibility in E-Resource Licenses*. bit.ly/trln-a11y-eresource-license

License

Table of Contents

Reference to Americans with Disabilities Act (ADA)

Example language

1. **BTAA/CRL/TRLN[1]**: Licensor 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 Web Accessibility Initiative Web Content Accessibility Guidelines 2.1 AA (http://www.w3.org/WAI/guid-tech.html).

Explanation of language

The content in this section is from the Library Accessibility Toolkit.

In addition to good librarianship, providing equal access to resources is also mandated by federal law. Because colleges and universities almost universally receive some sort of federal funding and/or provide some type of public accommodation (even if privately owned), it is generally accepted that these laws apply to them under Title II and Title III of the Americans with Disabilities Act (ADA).

ADA - Americans with Disabilities Act

The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life including jobs, schools, transportation, and all public and private places that are open to the general public. It became law in 1990 and has been revised several times, with the latest revision taking effect in 2017. Access the ADA regulations.

Title II of the ADA

Title II provides equal access for individuals with disabilities to "all services, programs, and activities provided or made available by public entities," and covers state and local government services. AccessTitle II.

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1 A variety of model license languages resources are available to provide suggested language to vendors. Footnotes are provided each time one of these resources are used in the guide. Big Ten Academic Accessibility Alliance (BTAA) Library E-Resource Accessibility - Standardized License Language (https://btaa.org/library/reports/library-e-resource-accessibility---standardized-license-language); Center for Research Libraries (CRL) Licensing (https://www.crl.edu/electronic-resources/about-crl-licensing); Triangle Research Libraries Network (TRLN) Licensing Principles (https://docs.google.com/document/d/1IoT3WBHw-DNaxq_POGuGpZPAzsaEnWMNRDBsHt-TFhc/edit?usp=sharing)

Title III prohibits any business identified as a "public accommodation" from discriminating on the basis of disability. The ADA currently defines 12 categories of public accommodations that can be owned by a private entity but are subject to the ADA. These include K-12 schools, undergraduate and graduate schools, museums, stores, restaurants, bars, service establishments, theaters, hotels, recreational facilities, doctors' and dentists' offices, shopping malls, and other businesses. Access Title III.

Relationship to other parts of the license agreement

The licensor may wish to qualify agreeing to ADA compliance with phrases such as "make best efforts to" or "make commercially reasonable efforts to." Acceptance of such qualifications will depend on the level of risk an institution is willing to take on and whether there are other ways to make the licensed materials accessible to users. If the licensor agrees that the licensee has the right to modify the licensed materials if they are not accessible, and/or if the licensor agrees to remedy accessibility-related complaints, an institution may find it appropriate to accept qualification of ADA compliance.

Section 508 is a related federal law regarding accessibility compliance and the next section includes further details about this component.

Do you need this language?

If negotiating with an international licensor, an assertion that the licensor must comply with the ADA could be removed because many international licensors will not agree to U.S. law. Instead, ask the licensor to acknowledge that the licensee must comply with the ADA, and ask them to comply with international standards such as WCAG instead. Depending on local preferences, an institution may choose to more generally reference state or federal accessibility laws.

How to advocate for this language with vendors

Though not legally persuasive, you can point out to the licensor that making a product accessible to all users is the morally right thing to do. A more legally persuasive approach is to explain to the licensor that the licensee has an obligation to comply with these laws, and that this language is necessary to mitigate the risk of a suit resulting from lack of accessibility. If an organization has experienced a legal suit related to an accessibility complaint, explain to the licensor that this is not a theoretical issue. If there is a campus mandate for accessibility, cite it.

It may also help to remind the licensor that it is in its best interest as a business for the licensed materials to be accessible to as many users as possible. If the resource is not accessible, it can result in less use, and resources with lower usage are the first considered when making cuts.

Some licensors may respond by stating they already invested work into accessibility upgrades for a product and argue that it is redundant to acknowledge accessibility compliance in the license agreement. In this case, point out that technology and related accessibility standards evolve and change, so today's compliance can fall out of date.

If the licensor argues size or lack of resources limits an ability to make a product accessibility compliant, offer information on how the library community provides resources for testing and compliance. Freely available or low-cost tools for testing and remediation can be found in Appendix 1 in this document. Be able to provide examples of the sort of adaptations or modifications that can be made to a product in order to comply.

Reference to Section 508

Example language

1. **BTAA/Duke/LC/TRLN[2]**: Licensor 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 Web Accessibility Initiative Web Content Accessibility Guidelines (http://www.w3.org/WAI/guid-tech.html).

Explanation of language

The content in this section is from the Library Accessibility Toolkit.

Section 508 is directed specifically at the accessibility of electronic and information technology products and services that federal agencies buy, create and use. It mandates that individuals with disabilities have access to information and services that is comparable to the access and use available to non-disabled individuals. It also provides guidelines to follow to ensure electronic resources are accessible. This includes making websites and apps accessible to assistive technologies like screen readers, alternative mouse and keyboard devices like motion trackers, magnification software, and more.

Section 508 refers to Section 508 of the Rehabilitation Act of 1973 which requires all federal agencies to develop, procure, maintain and use information technology that is accessible to all people, regardless of whether they work for the federal government or not. The law was added to the Rehabilitation Act in 1998 and was revised in 2017. The current revision is commonly referred to as the Revised 508 Standards. Section 508 provides definitions and requirements for ensuring information technology is accessible.

In addition to all federal organizations, the law applies to any organization doing business with the federal government as well as any organization that accepts federal funds. This

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2 Big Ten Academic Accessibility Alliance (BTAA) Library E-Resource Accessibility - Standardized License Language (https://btaa.org/library/reports/library-e-resource-accessibility---standardized-license-language); Duke University Libraries Licensing Principles(unpublished); Terms and Conditions for License of Electronic Resources (https://www.loc.gov/acq/devpol/lc-model-license.pdf); Triangle Research Libraries Network (TRLN) Licensing Principles (https://docs.google.com/document/d/1IoT3WBHw-DNaxq_POGuGpZPAzsaEnWMNRDBsHt-TFhc/edit?usp=sharing)

includes libraries and education institutions. Access the U.S. General Services Administration's Section 508 website for more information.

Relationship to other parts of the license agreement

Section 508 language details the compliance licensee expects from licensors by supporting various supportive measures (although the Duke, TRLN, and BTAA example language refer specifically to WCAG rather than Section 508.) Section 508 is usually specifically referred to in the language requesting a VPAT that demonstrates compliance with Section 508 standards and sometimes alongside WCAG standards.

Do you need this language?

Institutions that receive certain types of federal funding, including the Assistive Technology Act, are required to comply with Section 508 with the resources they provide to their users. Library staff should consult with local stakeholders to determine if this criteria is met.

If negotiating with an international licensor, an assertion that the licensor must comply with Section 508 could be removed because many international licensors will not agree to U.S. law. Instead, you can ask the licensor to acknowledge that the licensee must comply with the Section 508, and ask them to comply with international standards such as WCAG instead. Depending on the local preferences, an institution may choose to more generally reference state or federal accessibility laws.

Review the WCAG section of this document for justifications for including Section 508 language.

How to advocate for this language with vendors

Though not legally persuasive, you can point out to the licensor that making a product accessible to all users is the morally right thing to do. A more legally persuasive approach is to explain to the licensor that the licensee has an obligation to comply with these laws, and that this language is necessary to mitigate the risk of a suit resulting from lack of accessibility. If an organization has experienced a legal suit related to an accessibility complaint, explain to the licensor that this is not a theoretical issue. If there is a campus mandate for accessibility, cite it.

It may also help to remind the licensor that it is in its best interest as a business for the licensed materials to be accessible to as many users as possible. If the resource is not

accessible, it can result in less use, and resources with lower usage are the first considered when making cuts.

Some licensors may respond by stating they already invested work into accessibility upgrades for a product and argue that it is redundant to acknowledge accessibility compliance in the license agreement. In this case, you can point out that acknowledging that investment explicitly in writing benefits them, and that technology and related accessibility standards evolve and change, so today's compliance can fall out of date.

If the licensor argues size or lack of resources limits an ability to make a product accessibility compliant, offer information on how the library community provides resources for testing and compliance. Freely available or low-cost tools for testing and remediation can be found in Appendix 1 in this document. Be able to provide examples of the sort of adaptations or modifications that can be made to a product in order to comply.

Reference to WCAG standards from World Wide Web Consortium (W3C)

Example language

1. **BTAA/CRL/TRLN[3]**: Licensor 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 Web Accessibility Initiative Web Content Accessibility Guidelines (http://www.w3.org/WAI/guid-tech.html).

2. **CRKN[4]**: Licensor shall conform to the ISO Standard (ISO/IEC 40500:2012) and any subsequent updates based on the World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 and comply with applicable Canadian laws relating to accessibility to ensure that the Licensed Materials are accessible to all Authorized Users.

3. **Jisc[5]**: Use all reasonable efforts to meet the W3C standards (www.w3.org/WAI/Resources/#in) to ensure that the Licensed Material is accessible to all Authorised Users.

Explanation of language

The Licensee requires this specific reference to Web Accessibility Initiative Web Content Accessibility Guidelines (WCAG) in order to have an agreed upon standard by which to judge platform accessibility. The WCAG is available at https://www.w3.org/WAI/standards-guidelines/wcag/ and is regularly updated to reflect the latest in compliance standards and testing innovations. Because of regular version releases, as well three levels of compliance (A, AA, AAA) for the testable success

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3 Big Ten Academic Accessibility Alliance (BTAA) Library E-Resource Accessibility - Standardized License Language (https://btaa.org/library/reports/library-e-resource-accessibility---standardized-license-language); Center for Research Libraries (CRL) Licensing (https://www.crl.edu/electronic-resources/about-crl-licensing); Triangle Research Libraries Network (TRLN) Licensing Principles (https://docs.google.com/document/d/1IoT3WBHw-DNaxq_POGuGpZPAzsaEnWMNRDBsHt-TFhc/edit?usp=sharing)

4 Canadian Research Knowledge Network (CRKN) Model License (https://www.crkn-rcdr.ca/index.php/en/model-license)

5 Jisc Model Licences (https://subscriptionsmanager.jisc.ac.uk/about/jisc-model-licence)

criteria for each guideline, it may be useful to locally discuss expectations for both the version and level of WCAG compliance. However, it may not always be appropriate to designate a specific version or level of WCAG that an e-resource is expected to comply with in the license. If the license may last for a number of years, it may be most advantageous to reference that it is expected for the resource to comply with the "latest version of WCAG" rather than a specific version, unless there is a WCAG version specified in a campus mandate.

Relationship to other parts of the license agreement

References to WCAG should be made in relation to ADA and Section 508 since WCAG is a mechanism for judging platform accessibility. It is also important here to outline what a vendor's liability will be for non-compliance with the WCAG standard. This can include both the timely response of the vendor to make the product in compliance with WCAG, licensee right to modify the resource content to make it locally accessible if it does not meet the WCAG standard, and, potentially, the right to cancel and receive a refund if neither of the above remedies is sufficient to make the resource WCAG compliant.

Do you need this language?

Yes, because this language should not be difficult for a vendor to agree to as it is usually modified by terms like "in a manner consistent with" or "all reasonable efforts", but ensure that your institution finds these modifications acceptable. If a vendor is reluctant to acknowledge even this level of accessibility compliance, that is a major red flag and the platform should be reviewed further through internal or external testing to ensure that it meets even the most basic accessibility and usability standards.

How to advocate for this language with vendors

Use internal and external accessibility testing to demonstrate what changes, if any, would be required to comply with WCAG standards. Discuss with the vendor the need for a shared standard to assist in the measurement and discussion of web accessibility and that WCAG acts as that shared standard. If an institution is comfortable, you could also consider modifying this language with "reasonable efforts", although this may open up local liability. Insist on the right to modify a resource locally to make it accessible if the vendor is only required to make reasonable efforts to comply with WCAG. If considering conducting internal testing to know if a resource is WCAG compliant as part of the negotiation, there are a number of tools included in Appendix 1 that may be useful. Effective e-resource testing can be time-intensive and does require an understanding of WCAG and general web design so consider if there is local bandwidth

and staffing to include WCAG testing as a part of a local license negotiation/acquisitions workflow.

Provide VPAT

Example language

1. **BTAA/TRLN[6]**: Licensor shall provide to Licensee a current, accurate completed Voluntary Product Accessibility Template (VPAT) to demonstrate compliance with accessibility standards (https://www.itic.org/policy/accessibility).

2. **CRL[7]**: Licensor shall provide to Licensee a current completed Voluntary Product Accessibility Template (VPAT) 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.

3. **LC[8]**: Licensor shall provide to Library a current completed Voluntary Product Accessibility Template (VPAT) to demonstrate compliance with the federal Section 508 standards.

Explanation of language

The licensee requires the provision of a Voluntary Product Accessibility Template (VPAT) as a standardized tool to communicate compliance or non-compliance with the federal Section 508 standards. The VPAT was initially developed to demonstrate compliance with Section 508 but the latest VPAT version 2 (https://www.itic.org/policy/accessibility/vpat) is designed to be used to demonstrate compliance with one or more standards including WCAG 2.0, WCAG 2.1, Section 508 and EN 301 549 from the European Union.

Relationship to other parts of the license agreement

References in a VPAT provision should be made in relation to WCAG 2.0, WCAG 2.1, Section 508 and EN 301 549 from the European Union, whichever law or compliance standard for which the VPAT is a compliance mechanism.

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6 Big Ten Academic Accessibility Alliance (BTAA) Library E-Resource Accessibility - Standardized License Language (https://btaa.org/library/reports/library-e-resource-accessibility---standardized-license-language); Triangle Research Libraries Network (TRLN) Licensing Principles (https://docs.google.com/document/d/1IoT3WBHw-DNaxq_POGuGpZPAzsaEnWMNRDBsHt-TFhc/edit?usp=sharing)

7 Canadian Research Knowledge Network (CRKN) Model License (https://www.crkn-rcdr.ca/index.php/en/model-license)

8 Terms and Conditions for License of Electronic Resources (https://www.loc.gov/acq/devpol/lc-model-license.pdf)

Do you need this language?

A VPAT can be an important tool in assessing vendor compliance. If a vendor is unwilling to commit to providing a VPAT or is entirely unfamiliar with VPATs, it can be a red flag that the vendor doesn't make accessibility a priority. If a vendor is unwilling to commit to providing a VPAT in the license, this is potentially not a dealbreaker, but the lack of a VPAT should initiate 1) further internal or external testing of the platform and 2) increased emphasis on the right to modify a resource to make it accessible.

If a VPAT is all that a vendor is willing to offer to demonstrate the accessibility of their platform, this can be a different kind of red flag. Because the VPAT is a tool for communicating about accessibility it can be just as easily used to demonstrate that a resource is not compliant. The existence of a VPAT is not an indication that a platform is accessible. In order to make a VPAT truly useful, a library should have a workflow evaluating a vendor's VPAT to determine 1) what it tells you about the accessibility of the platform and 2) if there are additional steps that need to be taken to evaluate a platform's accessibility before acquisition or renewal.

How to advocate for this language with vendors

If a vendor is familiar with VPATs they are unlikely to reject this provision, however, they may want to modify it by restricting the provision of VPATs to once a year. While once a year, potentially as part of a renewal cycle, is acceptable, a licensee may want to specify that if the platform undergoes a redesign, a new VPAT should be provided. If a vendor is unfamiliar with VPATs, there are a number of resources for platform developers to use to create one including the Information Technology Industry Council website and the Section 508 website. Some accessibility vendors like Level Access and Deque will also assist a platform developer in preparing their VPAT for users. Providing a VPAT doesn't require a vendor to change anything about their platform, it is just a roadmap for the ways in which a platform may or may not be compliant.

Licensee has right to modify content to make it accessible

Example language

1. **BTAA/TRLN[9]**: Nothing in this Agreement shall limit the Licensee or any end user from making lawful, noninfringing uses to facilitate access to the Licensed Materials by users who have disabilities. For the avoidance of doubt, the Licensor authorizes such uses.

2. **CRL[10]**: 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.

3. **CRKN[11]**: Members may alter or modify the Licensed Materials as necessary to provide an equivalent level of access to Authorized Users with disabilities if the Licensed Materials are not already provided in Accessible Formats.

4. **Jisc[12]**: (in the permitted uses section) to convert or adapt Licensed Material into Braille or other formats or forms suitable for providing access to, and use by, Authorised Users with impaired mental and/or physical abilities and to provide access to such converted or adapted form for the purposes of this Clause 3.

5. **LC[13]**: In all cases, if the product does not comply, the Library has the right to adapt the Licensed Materials in order to comply with U.S. Federal law.

Explanation of language

The licensee needs to assert its right to adapt the materials to make them available to its users in the case that the licensor has not complied with the ADA or WCAG. Being able

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9 Big Ten Academic Accessibility Alliance (BTAA) Library E-Resource Accessibility - Standardized License Language
(https://btaa.org/library/reports/library-e-resource-accessibility---standardized-license-language); Triangle Research Libraries
Network (TRLN) Licensing Principles (https://docs.google.com/document/d/1IoT3WBHw-
DNaxq_POGuGpZPAzsaEnWMNRDBsHt-TFhc/edit?usp=sharing)

10 Center for Research Libraries (CRL) Licensing (https://www.crl.edu/electronic-resources/about-crl-licensing)

11 Canadian Research Knowledge Network (CRKN) Model License (https://www.crkn-rcdr.ca/index.php/en/model-license)

12 Jisc Model Licences (https://subscriptionsmanager.jisc.ac.uk/about/jisc-model-licence)

13 Terms and Conditions for License of Electronic Resources (https://www.loc.gov/acq/devpol/lc-model-license.pdf)

to adapt the materials allows the licensee to mitigate its own legal risk, in addition to making the material available to its users.

Relationship to other parts of the license agreement

If the licensor has agreed to fair use in another part of this agreement, this statement is redundant ("belt and suspenders") and can be omitted if the licensor doesn't want it to appear, as modifying materials to make them accessible is considered a fair use.

If the licensor does not agree to remedy any accessibility issues itself, or will only agree to make "reasonable efforts" to comply, then the licensee needs to assert the right to modify materials so that your institution can make the materials available to users with disabilities.

Do you need this language? Which language should you use?

When considering the importance of this language, an institution needs to evaluate the local level of risk tolerance. Is an institution positioned to take on the risk of a user with a disability not being able to access the resource licensed?

When selecting the language to use, an institution will want to consider what laws (US or other) may be relevant to both the licensee and the licensor, and which laws an institution may have a mandate with which to comply. In example 5, the Library of Congress must reference US federal law. If an institution does not have to reference specific law, it may be simpler to adopt language that doesn't refer to specific laws or jurisdictions, such as in example 1.

Licensors are often wary of a licensee asserting the right to "adapt" or "modify" the licensed materials, so an institution may want to avoid model language that uses those terms. Example 1 uses the phrase "make lawful, non-infringing uses" instead. In any scenario, an institution should be prepared to provide examples of what kinds of modifications or adaptations (or non-infringing uses) may be made, if requested by the licensor. Consider telling the licensor that such modifications would be, in most cases, made to insubstantial, nominal amounts of content.

How to advocate for this language with vendors

Explain that there is a legal risk if the materials are not accessible and cannot be made accessible. In turn, this may mean the material cannot be licensed. If there is a campus mandate for accessibility, cite it.

Be able to provide examples of the sort of adaptations or modifications that will be made. If the licensee's institution has a disability support office, ask that office's staff about the kinds of modification or other accommodation requests they receive and how they resolve them. Examples of accessibility requests include, but are not limited to, enlarging the print size of exported content, converting exported content into Braille or audio file formats, and using application-specific tools to make full-text documents accessible.

Licensor will respond to and remedy accessibility-related complaints

Example language

1. **If there is a termination clause elsewhere in the agreement**: In the event that the Licensed Materials are not Accessibility compliant, the Licensee may demand that the Licensor promptly make modifications that will make the Licensed Materials Accessibility compliant. Licensor agrees to promptly respond to and resolve any complaint regarding accessibility of Licensed Materials. If the complaint is not adequately resolved within thirty (30) days, then the Licensee may treat the incident as a material breach, [subject to Section X.Y (Termination clause).]"

2. **If there is not a termination clause elsewhere in the agreement**: "In the event that the Licensed Materials are not Accessibility compliant, the Licensee may demand that the Licensor promptly make modifications that will make the Licensed Materials Accessibility compliant. Licensor agrees to promptly respond to and resolve any complaint regarding accessibility of Licensed Materials. If the complaint is not adequately resolved within thirty (30) days, then the Licensee may treat the incident as a material breach and terminate the Agreement with a pro-rata refund.

Explanation of language

If an institution detects any accessibility issues, or particularly if a user is unable to use the resource(s) because it is not accessible, the institution needs language that holds the provider accountable for reviewing and remedying its platform's inaccessible features. If the provider is unable to make the platform accessible, as a last resort, the institution needs cover to exit the agreement. Termination is not the preferred solution since the want is for a licensor to be invested in fixing inaccessible features, but an institution needs to be able to terminate a contract if that is the only option.

Relationship to other parts of the license agreement

- Having a strong termination clause elsewhere in the agreement that can be referenced is especially helpful.
  - "If either party believes that the other has materially breached any obligations under this Agreement, such party shall so notify the breaching party in writing. 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 the thirty (30) day period, the non-breaching party shall have the right to terminate the Agreement without further notice." (CDL model license[14])

- Additionally, having language in the termination clause about pro-rata refunds in the case of early termination is advisable for subscription resources.
  - "In the event of early termination due to the Licensor materially breaching this Agreement, 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 from the date of termination." (NERL model license[15])
- Be on the lookout for any auto-renewal language or cancellation notices, and mitigate it if necessary.
  - The initial term of this Agreement will commence as of the Effective Date and will continue for a period of one (1) year. The initial term will automatically renew for successive one (1) year terms unless either Party notifies the other in writing, not less than thirty (30) days prior to the expiration of the current term, of its intention not to renew. Notwithstanding the foregoing, outstanding accessibility complaints at any point during the Term may serve as grounds for non-renewal [or early termination] of the Agreement.
    - Aim to keep the cancellation/termination notification timeline as brief as possible.

Do you need this language?

It's judicious to advocate for this language when:
- The provider agrees only to make reasonable efforts to comply with the ADA or WCAG standards.
- The provider acknowledges, or an accessibility audit indicates, that the platform does not currently comply with established standards.
- The provider indicates that any necessary updates are scheduled on their development roadmap for the upcoming renewal cycle (if tied to a subscription resource).

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14 California Digital Library (CDL) Model License (https://cdlib.org/cdlinfo/2017/01/25/cdl-model-license-revised/)

15 Northeast Research Libraries (NERL) Model License (http://nerl.org/wp-content/uploads/2021/03/NERLModelLicense-_61019_a.pdf)

- The licensed content is expensive and/or broadly used, and cost recovery is an important issue.
- The agreement covers a multi-year pricing deal.

How to advocate for this language with vendors

If the provider cannot provide written assurance in the contract that they will adhere to widely accepted accessibility standards, then the institution needs guarantees and protections to hold vendors accountable, and if necessary, terminate the agreement if the product is unusable for a segment of authorized users. Terminating the contract is typically a last resort since institutions license the resources so users can access the content, but in the absence of written assurances of conformance, institutions need a way to ensure they're investing their money in resources that are accessible to all users.

Appendix 1: Free tools for electronic resource accessibility assessment

Assessing an electronic resource for its accessibility can be a powerful tool to assist in negotiating both license and business terms that address user needs. If you can identify the ways in which an electronic resource is inaccessible or could be more accessible, you can more easily address, as part of purchase negotiation or renewal discussions, the need for improvements and/or modifications to materials.

However, quality accessibility assessment has associated costs. While there are a number of tools, both free and paid, that can help assess electronic resources, these will only address certain issues and they may not dig into some of the more nuanced ways in which functionally-diverse users use assistive technologies that make the electronic resources accessible. There is currently no website evaluation tool on the market that can replace the expertise of a real-life functionally-diverse user. The resources provided below point to free tools that could be used to begin assessing accessibility at your institution. Other resources, like the Library Accessibility Alliance's E-resource Evaluation Reports can provide you with high-level accessibility evaluations for many library e-resource platforms.

Resource: a11y Color Contrast Accessibility Validator
URL: https://color.a11y.com/?wc3
Vendor: Bureau of Internet Accessibility
"This website provides free color contrast analysis tools that will display the color contrast issues of a web page or chosen color-pair; per WCAG 2.1 Guidelines. Color Contrast refers to how bright or dark colors appear against each other on screens; particularly with regard to the relative, gray-scale luminosity as perceived by the human eye." Users can enter a webpage to test, but they can also pick background and foreground colors to test from contrast compatibility.

Resource: Ace by DAISY
URL: https://daisy.org/activities/software/ace/
Vendor: DAISY Consortium
"Ace by DAISY is a free, open source tool designed to check the accessibility of EPUB files at any point in a publishing workflow. It has been developed to assist in the evaluation of conformance to the EPUB Accessibility Specification." Users can download the software as a command line tool or in a desktop GUI Interface.

Resource: axe

URL: https://www.deque.com/axe/

Vendor: Deque

axe is "an accessibility testing engine for websites and other HTML-based user interfaces. It's fast, secure, lightweight, and was built to seamlessly integrate with any existing test environment so you can automate accessibility testing alongside your regular functional testing." axe is provided via Chrome extension and a14-day free trial for their fee-based axe DevTools product.

Resource: Coblis - Color Blindness Simulator

URL: https://www.color-blindness.com/coblis-color-blindness-simulator/

Vendor: Colblindor

Coblis allows users to upload an image file and view it through a variety of filters to simulate what users with different types of color blindness would see.

Resource: GrackleDocs

URL: https://www.grackledocs.com/

Vendor: GrackleDocs

"Grackle Docs is an add-on that runs in Google Docs. When opened, it scans the current document for accessibility issues. When the scan finishes, Grackle Docs arranges the document's elements and structures into categories:

- Document
- Images
- Headings
- Tables
- Landmarks
- Content

Note: 30-day free trial available, after that a subscription may be required

Resource: HTML Codesniffer

URL: https://squizlabs.github.io/HTML_CodeSniffer/

Vendor: Squiz

"HTML_CodeSniffer is a client-side script that checks HTML source code and detects violations of a defined coding standard. HTML_CodeSniffer is written entirely in JavaScript, does not require any server-side processing and can be extended by developers to enforce custom coding standards by creating your own 'sniffs'." HMTL_CodeSniffer works through a bookmarklet as well as a site where you can paste code and test it against WCAG 2.1 Level, A, AA, AAA, or Section 508.

Resource: Image Alt Tags Checker
URL: https://www.calculators4u.com/seo/image-alt-tags-checker.php
Vendor: Calculators4u
"This tool is used to check all the images present on the webpage and check alt tag and title tag of the image." Users can enter a webpage to test and will receive a list of images with proper alt tags and images without alt tags.

Resource: Photosensitive Epilepsy Analysis Tool (PEAT)
URL: https://trace.umd.edu/peat/
Vendor: Trace Research & Development Center, University of Maryland
"The Trace Center's Photosensitive Epilepsy Analysis Tool (PEAT) is a free, downloadable resource for developers to identify seizure risks in their web content and software. The evaluation used by PEAT is based on an analysis engine developed specifically for web and computer applications." PEAT is a downloadable piece of software that you can use to capture and analyze a website or video.

Resource: RGBlind
URL: https://www.rgblind.se/
Vendor: Interaktiva rum
"RGBlind is an open-source real-time color blindness simulation tool for the web." RGBlind works as a color blindness simulator where you can enter URLs and filter them to simulate what users with different types of color blindness would see, a web toolkit for web designers hosted on GitHub, and browser extensions for Chrome, Firefox and Opera.

Resource: tota11y
URL: https://khan.github.io/tota11y/
Vendor: Khan Academy
"tota11y helps visualize how your site performs with assistive technologies…tota11y aims to reduce this barrier of entry by helping visualize accessibility violations (and successes), while educating on best practices." tota11y works through a javascript bookmarklet. Khan Academy also shared the source code on GitHub.

Resource: WAVE Tool
URL: https://wave.webaim.org/
Vendor: WebAIM/Utah State University
"WAVE is a suite of evaluation tools that helps authors make their web content more accessible to individuals with disabilities. WAVE can identify many accessibility and Web Content Accessibility Guideline (WCAG) errors, but also facilitates human evaluation of

web content. Our philosophy is to focus on issues that we know impact end users, facilitate human evaluation, and to educate about web accessibility." You can enter a URL into the WAVE homepage or use the WAVE Chrome and Firefox extensions to receive a report about the page's potential accessibility issues. WebAIM also offers fee-based accessibility services for wider-scale evaluation.

Appendix 2: Determining accessibility requirements for your institution

Every institution will have unique accessibility requirements that depend on its own local context, with differences due to level of risk tolerance, available financial and human resources, mission and values, local law, and more. A comprehensive guide to assessing and documenting accessibility requirements is outside of the scope of this resource, but the sections below outline many of the issues that should be considered when undertaking such an assessment, along with the practical implications of managing this work.

Issues to consider for discussions with content providers

- How do you expect provider commitments to show up in your procurement process?
    - Formal license agreements
    - SERU (Shared Electronic Resource Understanding) purchase orders
    - What about situations where no formal agreement or purchase order is required?
- How will you incorporate VPATs into your acquisitions workflow? If you want to ask for a copy of the VPAT at the outset of the negotiation process and conduct an internal review by someone who can gauge possible issues with the platform, consider the following:
    - Who at your organization has bandwidth and expertise?
    - What might it take to build connections to formalize workflows?
    - Do you need to build capacity here?
    - What does training look like? What kind of time commitments are involved?
- Will you accept providers making some version of "reasonable efforts" to comply with various standards and statutes or do they need to warrant that they "shall comply"?
    - What risks are involved? Is your library positioned to absorb these risks and potential costs if a complaint is registered and not remedied?
    - If the provider will only make "reasonable efforts", do other components of the license become more important for your institution?
- Determine whether the provider is making accessibility a development priority.
    - How are accessibility improvements shaping the provider's development roadmap for their website in the near- and long-term?
    - What recent accessibility improvements have they made?

- - Has the Library Accessibility Alliance conducted an audit recently? If so, did the provider respond?
  - Does the provider have a public accessibility statement on their website? How meaningful is it? How do you assess meaning?
  - Has the vendor completed a VPAT? If so, is it accurate?
- What can you tell the provider about internal policies surrounding accessibility requirements?
  - Does your campus have a mandate for compliance?
  - Does your library have a publicly-articulated statement about how it will demonstrate its commitment to accessibility?
- What can you tell the provider about your internal reviews and workflows around ensuring licensed platforms are accessible?
  - What kinds of common scenarios would necessitate a library to make its own modifications to inaccessible materials? What kinds of modifications would you likely make? How much content would be affected at once?
  - What kinds of work happens within your organization to review a platform to assess its accessibility? How is that information shared with providers? For ongoing resources, how, if at all, is that work tied to renewal decisions?
- How might accessibility performance affect your library's long-term commitment to a resource/provider?
  - Are you willing to sign multi-year agreements with providers that are not doing their due diligence to ensure their content conforms to widely accepted accessibility standards?
  - Do you want any language in multi-year agreements about exiting early or non-renewal due to inadequate accessibility performance?

Issues to consider for discussions with internal institutional stakeholders

- How do you build accessibility fluency with your internal stakeholders so that they are able to engage in these conversations in a meaningful way?
  - How do you balance the needs of patrons against articulated organizational values and/or policies?
  - What kinds of website behavior would register as red flags in an accessibility audit?
  - How would non-compliance with widely accepted standards adversely impact patrons' usage of the resource?
- When you're not able to secure the language you need in a formal agreement, who at your institution is involved in the conversation?

- Conversation starters with subject librarians:
  - Status of the licensing language/guarantees in the formal paperwork
  - Potential deficiencies with the platform/licensed content
  - How might the resource be used?
  - Are there alternate resources to consider?
- Is there interest in acquiring or renewing on condition of accessibility improvements?
  - Who gets to make the final call on whether the provider meets indicators sufficiently to acquire or renew the resource?
  - What kind of performance indicators do you use to hold providers accountable for improvements?
  - Questions specific to acquisitions/e-resources workflows:
    - How do you sustainably build this work into the renewal process and scale it up across your collection?
    - How do you manage these decision-making timelines in your internal record-keeping systems?
    - Who owns which part of the work in this process?
    - What boilerplate language do you need in the agreement/ formal paperwork to cover these contingencies?

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