

# Courseware License Agreement Guide



# Contents

<b>About the Supporting Organizations</b>	<b>3</b>
<b>Part I: Courseware License Agreement</b>	
<b>Checklist: Click-through</b>	<b>4</b>
<b>Key Insights</b>	<b>4</b>
<b>Click-through License Agreement</b>	<b>4</b>
<b>Key considerations</b>	<b>5</b>
<b>Part II: Courseware License Agreement</b>	
<b>Checklist: Negotiable</b>	<b>7</b>
<b>Key Insights</b>	<b>7</b>
<b>Negotiable License Agreement</b>	<b>7</b>
<b>Key Considerations</b>	<b>8</b>
<b>References &amp; notes</b>	<b>12</b>
<b>Appendix A: Courseware License Agreement</b>	
<b>Checklist Click-through</b>	
<b>Appendix B: Courseware License Agreement</b>	
<b>Checklist Negotiable</b>	

## Citing this Resource:

To reference this work, please cite:

Horne, T. (2019, April 30) Courseware License Agreement Checklist. Every Learner Everywhere  
<https://www.everylearnereverywhere.org/resources/courseware-license-agreement-guide/>.

# About the Supporting Organizations



**Every Learner Everywhere** is a network of twelve partner organizations with expertise in evaluating, implementing, scaling, and measuring the efficacy of education technologies, curriculum and course design strategies, teaching practices, and support services that personalize instruction for students in blended and online learning environments. Our mission is to help institutions use new technology to innovate teaching and learning, with the ultimate goal of improving learning outcomes for Black, Latinx, and Indigenous students, poverty-affected students, and first-generation students. Our collaborative work aims to advance equity in higher education centers on the transformation of postsecondary teaching and learning. We build capacity in colleges and universities to improve student outcomes with digital learning through direct technical assistance, timely resources and toolkits, and ongoing analysis of institution practices and market trends. For more information about Every Learner Everywhere and its collaborative approach to equitize higher education through digital learning, visit [www.everylearnereverywhere.org](http://www.everylearnereverywhere.org).



**Intentional Futures** is a Seattle-based design and strategy studio. We work closely with clients across the public and private sectors to solve hard problems that matter and make big, ambitious ideas come to life. Our core offerings include human-centered strategy, data-driven storytelling, intentional, collective learning, and product design and prototyping. To learn more about iF or see our past work, visit [intentionalfutures.com](http://intentionalfutures.com).

---

# Part I: Courseware License Agreement Checklist: Click-through

This is a tool to help you review your adaptive courseware click-through license agreement. Be sure to follow your institution's procurement processes and note this tool does not constitute legal advice.

## Key Insights

- There is no one-size-fits-all in adaptive courseware license agreements. Gain guidance to help your institutions navigate adaptive learning license agreements.
- Each license agreement is a transaction that should be tailored to fit your institution's specific circumstance. Find out if an adaptive courseware license agreement meets your institution's needs.

## What is a click-through license agreement?

A click-through license agreement is frequently referred to as "Terms of Use" or "Terms of Service" and accepted by clicking on digital prompt without room for negotiations.

This is often the case when:

- The purchase of the courseware is relatively low-priced;
- You register for the adaptive courseware by "clicking through" online terms of use; and/or
- You have limited or no interaction with a vendor sales or business development professional.

You can review your license agreement by using the interactive document linked below.

### Courseware License Agreement Checklist: Click-through

This is an interactive tool to help you review your adaptive courseware license agreement. This is an interactive tool to help you review your adaptive courseware negotiable license agreement. Please see Appendix A.

# What are the key considerations for accepting a click-through license agreement?

This table is a summary of the key considerations in the interactive document above.

**A note on *ensure*:** While we use the word “ensure” we recognize that vendors may not agree to all of the terms referenced and that it may be in the institution’s business interest to compromise on some terms when entering into a license agreement.

Key Considerations	Checklist Items
Financial considerations	<p>Ensure that the terms of payment (e.g. per student, per course, flat fee) are best suited for your institution.</p> <ul style="list-style-type: none"><li>• Could better pricing be obtained by adjusting payment metrics, such as an institution-wide flat fee instead of per user charges?</li><li>• Are discounts available for particular circumstances (e.g. Pell Grant funding)?</li></ul>
Scope of agreement	<p>Ensure that the scope is sufficiently broad to meet your needs.</p> <p>Does it cover all intended types of users (e.g. students, instructors, administrators, visiting scholars) who will need to use it (sometimes, these are called “Authorized Users”)?</p> <p>Are you allowed a sufficient number of logins?</p> <p>Will students be able to access the courseware from all the devices they might use (e.g., types of computers, types of browsers, mobile devices/tablets)?</p>
Protection of your content	<p>Ensure that, if the vendor will have access to or use the institution’s IP in any way, the license agreement makes it clear that the institution owns the IP and clearly delineates how the vendor can use it. The license should specify that curriculum, course materials, and syllabi, for instance, are IP that continues to be owned by your institution.</p> <p>The following is an example of overreaching language presented by a vendor:</p> <p><i>“You hereby grant Vendor a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sublicensable, and transferable license to use, distribute, reproduce, modify, prepare derivative works of, perform, and display Your Content in connection with the Services and Vendor’s business, including for promoting the Services, in all media now known or hereafter devised, and through any media channels.”</i></p>

<p><b>Data security/user information</b></p> <p><i>This is particularly important if the vendor will receive end user data.</i></p>	<p>Ensure that the license agreement indicates that adequate data security measures are in place and requires end user data be treated confidentially.</p> <ul style="list-style-type: none"> <li>• Who has access to your data?</li> <li>• Where is your data stored?</li> <li>• What is the hosts data recovery strategy?</li> <li>• How long will it take for you to get your data back if you stop using their service, and how will it be delivered?</li> <li>• Does the license agreement address breaches of data security obligations?</li> </ul>
<p><b>Infringement</b></p>	<p>Ensure that the vendor provides a warranty against the vendor's infringement and defends the institution against those claims to avoid lapses in the ability to use the adaptive courseware.</p> <ul style="list-style-type: none"> <li>• Are the procedures, time, and cost to remedy infringement (e.g. modifying the courseware so that it becomes non-infringing and that the courseware performs to its original standard) clearly stated?</li> </ul>
<p><b>Limitations of liability</b></p> <p><i>Vendors typically attempt to limit their liability in license agreements.</i></p>	<p>Ensure that the license agreement does not limit the vendor's liability for breaches or losses that might be particularly sensitive or costly to the institution, such as a vendor's breaches of confidentiality or privacy.</p> <p>Are you clearly informed about liability caps, exceptions and waivers of certain categories and types of damages?</p>
<p><b>Name and logo</b></p>	<p>Ensure that the license agreement only permits the vendor to use your name and logo in manners that are acceptable to you.</p> <ul style="list-style-type: none"> <li>• Is it acceptable for the vendor to use your name and logo, for instance, on marketing materials or on its website?</li> </ul>
<p><b>Documents incorporated by reference</b></p> <p><i>These are additional documents referenced in your license agreement.</i></p>	<p>Ensure that you have reviewed other documents "incorporated by reference" as the terms of these outside documents are legally part of your license agreement.</p> <p>These can include:</p> <ul style="list-style-type: none"> <li>• Terms of use (sometimes found on vendor's website)</li> <li>• Service level agreements (SLAs)</li> <li>• Maintenance agreements</li> </ul>

---

# Part 2: Courseware License Agreement Checklist: Negotiable

This is a tool to help you review your adaptive courseware negotiable license agreement.

Be sure to follow your institution's procurement processes and note this tool does not constitute legal advice. The time that it takes to reach a negotiated agreement will vary depending on the vendor and your institution's processes.

## Key Insights

- There is no one-size-fits-all in adaptive courseware license agreements. Gain guidance to help your institutions navigate adaptive learning license agreements.
- Each license agreement is a transaction that should be tailored to fit your institution's specific circumstance. Find out if an adaptive courseware license agreement meets your institution's needs.

## What is a negotiable license agreement?

Negotiable license agreements are those that allow customers to work with the vendor to establish terms that benefit both parties.

This is often the case when:

- The purchase of the courseware is a relatively large investment;
- Implementing the courseware requires considerable technical integration; and/or
- You have significant interaction with a vendor sales or business development professional.

## Courseware License Agreement Checklist: Negotiable

This is an interactive tool to help you review your adaptive courseware negotiable license agreement. Please see Appendix B.

### What are the key considerations for accepting a negotiable license agreement?

This table is a summary of the key considerations in the interactive document above.

**A note on *ensure*:** While we use the word “ensure” we recognize that vendors may not agree to all of the terms referenced and that it may be in the institution’s business interest to compromise on some terms when entering into a license agreement.

Key Considerations	Checklist Items
Financial considerations	<p>Ensure that the terms of payment (e.g. per student, per course, flat fee) are best suited for your institution.</p> <ul style="list-style-type: none"><li>• Could better pricing be obtained by adjusting payment metrics, such as an institution-wide flat fee instead of per user charges?</li><li>• Are discounts available for particular circumstances (e.g. Pell Grant funding)?</li></ul>
Scope of agreement	<p>Ensure that the scope is sufficiently broad to meet your needs.</p> <ul style="list-style-type: none"><li>• Does it cover all intended types of users (e.g. students, instructors, administrators, visiting scholars) who will need to use it (sometimes, these are called “Authorized Users”)?</li><li>• Are you allowed a sufficient number of logins?</li><li>• Will students be able to access the courseware from all the devices they might use (e.g., types of computers, types of browsers, mobile devices/tablets)?</li></ul>



## Deliverables

Ensure that the license agreement is clear regarding what the vendor will furnish.

- Is the courseware going to be off-the-shelf, semi-customizable, or an adaptive platform that can be used to build a custom course?
- Is the length of access suitable (e.g. single semester, multiple quarter use, year-long)?
- How much work is the vendor accountable for in ensuring deliverables meet your institutions accessibility guidelines and work well with assistive technologies?

## Acceptance period

Ensure that there is an adequate acceptance period that gives you sufficient time to inspect and test that the courseware is acceptable and works properly.

## Support

Ensure that, either through the license agreement or an ancillary agreement (such as a support contract), your institution's support requirements are met.

### Onboarding

- Is there suitable integration with the institution's existing technology (e.g. learning management systems, such as Blackboard or Canvas)?
- Is there assistance with migrating your existing data from where it is currently housed (e.g. learning management systems or existing courseware solutions) to the new adaptive courseware?

### Training

- Who and what type of training will you need (e.g. remote v. in-person for faculty only or students too)?

### Ongoing

- What types of support are provided - telephone v. online?
- Are there quantity restrictions? Can end users contact support directly?
- Is the period of support sufficiently long (particularly relevant for non-SaaS delivered adaptive courseware)

### Pricing

- Is there an additional fee for support? If so, is it fixed or indexed so that it can be budgeted for?

<div><b>Maintenance</b></div> <div><i>Pay particular attention to maintenance if adaptive courseware is installed locally or on the institution's servers.</i></div>	<div>Ensure that, either through the license agreement or an ancillary agreement such as a maintenance contract, the institution's maintenance requirements are met.</div> <div><ul style="list-style-type: none"><li>• Does the license cover fixes, corrected versions, and new upgrades/releases?</li></ul></div>
<div><b>Performance standards</b></div> <div><i>Performance standards are particularly important for adaptive learning courseware because it is an emerging area of product development with many new vendors and vendors with new products.</i></div>	<div>Ensure that the license agreement includes performance standards.</div> <div><ul style="list-style-type: none"><li>• For example, is the maximum permitted downtime over a rolling 30-day period excessive?</li><li>• Are there contractual requirements regarding efforts to fix problems (e.g. "best efforts" to fix problems are an institution-friendly standard)?</li><li>• Does the vendor agree to remedy outages within a certain period of time (e.g. 1-2 hours)?</li></ul></div>
<div><b>Protection of your content</b></div>	<div>Ensure that, if the vendor will have access to or use the institution's IP in any way, the license agreement makes it clear that the institution owns the IP and clearly delineates how the vendor can use it. The license should specify that curriculum, course materials, and syllabi, for instance, are IP that continues to be owned by your institution.</div> <div>The following is an example of overreaching language presented by a vendor: <i>"You hereby grant Vendor a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sublicensable, and transferable license to use, distribute, reproduce, modify, prepare derivative works of, perform, and display Your Content in connection with the Services and Vendor's business, including for promoting the Services, in all media now known or hereafter devised, and through any media channels."</i></div>

## Data security/user information

*This is particularly important if the vendor will receive user data.*

Ensure that the license agreement indicates that adequate data security measures are in place and requires end user data be treated confidentially.

- Who has access to your data?
- Where is your data stored?
- What is the hosts data recovery strategy?
- How long will it take for you to get your data back if you stop using their service, and how will it be delivered?
- Does the license agreement address breaches of data security obligations of response and mitigation (e.g. report the data breach, send notifications to potential victims, assist in the investigation)?

## Infringement

Ensure that the vendor provides a warranty against the vendor's infringement and defends the institution against those claims to avoid lapses in the ability to use the adaptive courseware.

- Are the procedures, time, and cost to remedy infringement (e.g. modifying the courseware so that it becomes non-infringing and that the courseware performs to its original standard) clearly stated?

## Source code

Ensure that you have the contractual right to access the source code if the institution will be modifying the licensed courseware. Clearly define how the source code may be used. Don't assume the rights granted respecting the object code are sufficient.

## Open source

Ensure that you know whether the adaptive courseware vendor incorporates open source code and understand what special terms may apply as a result (e.g. terms arising from GNU GPL Open Source license).

- If the adaptive courseware incorporates open source code, require the vendor to make a representation in the license agreement that the vendor has and will comply with the terms and conditions of any open source usage.
- If the vendor claims that the adaptive courseware does not incorporate open source code, require the vendor to make representation that it hasn't (or won't) use open source code.

<b>Breaches</b>	<p>Ensure that the institution has a sufficient opportunity (typically 30 days) to cure any breach (e.g. non-payment or unauthorized usage)</p>
<p><b>Limitations of liability</b></p> <p>Vendors typically attempt to limit their liability in license agreements.</p>	<p>Ensure that the license agreement does not limit the vendor's liability for breaches or losses that might be particularly sensitive or costly to the institution, such as a vendor's breaches of confidentiality or privacy.</p> <ul style="list-style-type: none"> <li>• Are you clearly informed about liability caps, exceptions and waivers of certain categories and types of damages?</li> </ul>
<b>Name and logo</b>	<p>Ensure that the license agreement only permits the vendor to use your name and logo in manners that are acceptable to you?</p> <ul style="list-style-type: none"> <li>• Is it acceptable for the vendor to use your name and logo, for instance, on marketing materials or on its website?</li> </ul>
<p><b>Documents incorporated by reference</b></p> <p><i>These are additional documents referenced in your license agreement.</i></p>	<p>Ensure that you have reviewed other documents "incorporated by reference" as the terms of these outside documents are legally part of your license agreement.</p> <p>These can include:</p> <ul style="list-style-type: none"> <li>• Terms of use (sometimes found on vendor's website)</li> <li>• Service level agreements (SLAs)</li> <li>• Maintenance agreements</li> </ul>

---

# References & notes

“How to Review Contracts: Process & Checklist by Expert London Lawyers.” <https://hallellis.co.uk/blog/contract-review-checklist/>.

Howard G. Zaharoff. “Reviewing Software License Agreements: A Licensee’s Checklist” <https://www.morse.law/news/software-license-agreements>.

“Who is liable when a data breach occurs? | Thomson Reuters ....” <https://legal.thomsonreuters.com/en/insights/articles/data-breach-liability>.

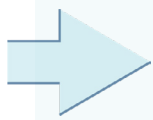
Zeegers, Ruben. “Data Breaches and Related Procedures.” Privacy & Data Protection Essentials Courseware - English, edited by Theo Wanders, Van Haren, 2019, pp. 123–124.

## Appendix A

# Courseware License Agreement Checklist: Click-through



This is a tool to help you review your adaptive courseware license agreement.



*Be sure to follow your institution's procurement processes, and note this tool does not constitute legal advice. The time that it takes to reach a negotiated agreement will vary depending on the vendor and your institution's processes.*

Frequently referred to as “Terms of Use” or “Terms of Service” and accepted by clicking on digital prompt without room for negotiations.

### THIS IS OFTEN THE CASE WHEN:

1. The purchase of the courseware is relatively low-priced;
2. You register for the adaptive courseware by “clicking through” online terms of use; and/or
3. You have limited or no interaction with a vendor sales or business development professional.

If you are looking for a checklist that will help you assess a **negotiable** courseware license agreement, please refer back to our Checklist for Courseware License Agreement resource and navigate to the Checklist for Negotiable Courseware License Agreement.

# Contents

This document will walk you through the steps required to set up your courseware license agreement. It will cover these areas:

1. Financial considerations
2. Scope of agreement
3. Protection of your content
4. Data security/user information
5. Infringement
6. Limitations of liability
7. Name and logo
8. Documents incorporated by reference

**A NOTE ON ENSURE:** While we use the word “ensure” we recognize that vendors may not agree to all of the terms referenced and that it may be in the institution’s business interest to compromise on some terms when entering into a license agreement. Each area includes an option notes section where you can add any clarification or alterations.

# 1. Financial Considerations

*Ensure that the terms of payment (e.g. per student, per course, flat fee) are best suited for your institution.*



Could better pricing be obtained by adjusting payment metrics, such as an institution-wide flat fee instead of per user charges?

YES

NO



Are discounts available for particular circumstances (e.g. Pell Grant funding)?

YES

NO

**Additional notes for Financial Considerations section:**



## 2. Scope of Agreement

*Ensure that the scope is sufficiently broad to meet your needs.*



Does it cover all intended types of users (e.g. students, instructors, administrators, visiting scholars) who will need to use it (these are sometimes referred to as “Authorized Users”)?

YES      NO



Are you allowed a sufficient number of logins?

YES      NO



Will students be able to access the courseware from all the devices they might use (e.g., types of computers, types of browsers, mobile devices/tablets)?

YES      NO

**Additional notes for Scope of Agreement section:**

### 3. Protection of Your Content

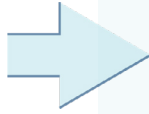
*Ensure that, if the vendor will have access to or use the institution's IP in any way, the license makes it clear that the institution owns the IP and clearly delineates how the vendor can use it. The license should specify that curriculum, course materials, and syllabi, for instance, are IP that continues to be owned by your institution.*

The following is an example of overreaching language presented by a vendor:

"You hereby grant Vendor a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sublicensable, and transferable license to use, distribute, reproduce, modify, prepare derivative works of, perform, and display Your Content in connection with the Services and Vendor's business, including for promoting the Services, in all media now known or hereafter devised, and through any media channels."

**Additional notes for Protection of Your Content section:**

## 4. Data Security/ User Information



**This section is particularly important if the vendor will receive end user data.**

*Ensure that the license agreement indicates that adequate data security measures are in place and requires end user data be treated confidentially.*



Who has access to your data?

Where is your data stored?

What is the hosts data recovery strategy?

## Data Security/User Information (Continued)



How long will it take for you to get your data back if you stop using their service, and how will it be delivered?

Does the license agreement address breaches of data security obligations?

**Additional notes for Data Security/User Information section:**

## 5. Infringement

*Ensure that the vendor provides a warranty against the vendor's infringement and defends the institution against those claims to avoid lapses in the ability to use the adaptive courseware.*

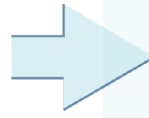


Are the procedures, time, and cost to remedy infringement (e.g. modifying the courseware so that it becomes non-infringing and that the courseware performs to its original standard) clearly stated?

**Additional notes for Infringement section:**

## 6. Limitations of Liability

*Ensure that the license agreement does not limit the vendor's liability for breaches or losses that might be particularly sensitive or costly to the institution, such as a vendor's breaches of confidentiality or privacy.*



**Vendors typically attempt to limit their liability in license agreements.**



Are you clearly informed about liability caps, exceptions and waivers of certain categories and types of damages?

**Additional notes for Limitations of Liability section:**

## 7. Name and Logo

*Ensure that the license agreement only permits the vendor to use your name and logo in manners that are acceptable to you.*



Is it acceptable for the vendor to use your name and logo, for instance, on marketing materials or on its website?

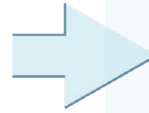
**Additional notes for Name and Logo section:**

## 8. Documents Incorporated by Reference

*Ensure that you have reviewed other documents “incorporated by reference” as the terms of these outside documents are legally part of your license agreement.*

### THESE CAN INCLUDE:

- **Terms of use** (sometimes found on vendor’s website)
- **Service level agreements (SLAs)**
- **Maintenance agreements**



**These are additional documents referenced in your license agreement.**

**Additional notes for Documents Incorporated by Reference section:**

### Questions?



Find more resources the [Assets Page](#)

For questions, contact [resources@everylearner.org](mailto:resources@everylearner.org)

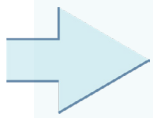


## Appendix B

# Courseware License Agreement Checklist: Negotiable



This is a tool to help you review your adaptive courseware license agreement.



*Be sure to follow your institution's procurement processes, and note this tool does not constitute legal advice. The time that it takes to reach a negotiated agreement will vary depending on the vendor and your institution's processes.*

License agreements that allow customers to work with the vendor to establish terms that benefit both parties.

### THIS IS OFTEN THE CASE WHEN:


1. The purchase of the courseware is a relatively large investment;
2. Implementing the courseware requires considerable technical integration; and/or
3. You have significant interaction with a vendor sales or business development professional.

If you are looking for a checklist that will help you assess a **click-through** courseware license agreement, please refer back to our [Checklist for Courseware License Agreement](#)\* resource and navigate to the Checklist for Click-through Courseware License Agreement.

# Contents

This document will walk you through the steps required to set up your courseware license agreement. It will cover these areas:

1. Financial Considerations
2. Scope of Agreement
3. Deliverables
4. Acceptance Period
5. Support
6. Maintenance
7. Performance Standards
8. Protection of Your Content
9. Data Security/User Information
10. Infringement
11. Source Code
12. Breaches
13. Open Source
14. Limitations of Liability
15. Name and Logo
16. Documents Incorporated by Reference



**A NOTE ON ENSURE:** While we use the word “ensure” we recognize that vendors may not agree to all of the terms referenced and that it may be in the institution’s business interest to compromise on some terms when entering into a license agreement. Each area includes an option notes section where you can add any clarification or alterations.

# 1. Financial Considerations

*Ensure that the terms of payment (e.g. per student, per course, flat fee) are best suited for your institution.*



Could better pricing be obtained by adjusting payment metrics, such as an institution-wide flat fee instead of per user charges?

YES

NO



Are discounts available for particular circumstances (e.g. Pell Grant funding)?

YES

NO

**Additional notes for Financial Considerations section:**

## 2. Scope of Agreement

*Ensure that the scope is sufficiently broad to meet your needs.*



Does it cover all intended types of users (e.g. students, instructors, administrators, visiting scholars) who will need to use it (these are sometimes referred to as “Authorized Users”)?

YES      NO



Are you allowed a sufficient number of logins?

YES      NO



Will students be able to access the courseware from all the devices they might use (e.g., types of computers, types of browsers, mobile devices/tablets)?

YES      NO

**Additional notes for Scope of Agreement section:**

### 3. Deliverables

*Ensure that the license agreement is clear regarding what the vendor will furnish.*



Is the courseware going to be off-the-shelf, semi-customizable, or an adaptive platform that can be used to build a custom course?



Is the length of access suitable (e.g. semester, multiple quarters, year-long)?

YES

NO



How is the vendor accountable in ensuring deliverables meet your institutions accessibility guidelines and work well with assistive technologies?

**Additional notes for Deliverables section:**

## 4. Acceptance Period

*Ensure that there is an adequate acceptance period that gives you sufficient time to inspect and test that the courseware is acceptable and works properly.*

**Additional notes for Acceptance Period section:**

## 5. Support

*Ensure that, either through the license agreement or an ancillary agreement (such as a support contract), your institution's support requirements are met.*

### ONBOARDING



Is there suitable integration with the institution's existing technology (e.g. learning management systems, such as Blackboard or Canvas)?

**YES      NO**



Is there assistance with migrating your existing data from where it is currently housed (e.g. learning management systems or existing courseware solutions) to the new adaptive courseware?

**YES      NO**

# Support (Continued)

## TRAINING



Who and what type of training will you need (e.g. remote v. in-person for faculty only or students too)?

## ONGOING



What types of support are provided—telephone v. online?



Are there quantity restrictions? Can end users contact support directly?

## Support (Continued)



Is the period of support sufficiently long (particularly relevant for non-SaaS delivered adaptive courseware)

### PRICING



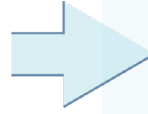
Is there an additional fee for support? If so, is it fixed or indexed so that it can be budgeted for?

**Additional notes for Support section:**



## 6. Maintenance

*Ensure that, either through the license agreement or an ancillary agreement such as a maintenance contract, the institution's maintenance requirements are met.*



**Pay particular attention to maintenance if adaptive courseware is installed locally or on the institution's servers.**



Does the license cover fixes, corrected versions, and new upgrades/releases?

**Additional notes for Maintenance section:**

## 7. Performance Standards

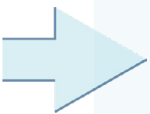
*Ensure that the license agreement includes performance standards.*



For example, is the maximum permitted downtime over a rolling 30-day period excessive?



Are there contractual requirements regarding efforts to fix problems (e.g. “best efforts” to fix problems are an institution-friendly standard)?



**Performance standards are particularly important for adaptive learning courseware because it is an emerging area of product development with many new vendors and vendors with new products.**

## Performance Standards (Continued)



Does the vendor agree to remedy outages within a certain period of time (e.g. 1-2 hours)?

**Additional notes for Performance Standards section:**

## 8. Protection of Your Content

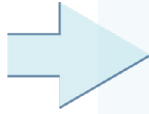
*Ensure that, if the vendor will have access to or use the institution's IP in any way, the license makes it clear that the institution owns the IP and clearly delineates how the vendor can use it. The license should specify that curriculum, course materials, and syllabi, for instance, are IP that continues to be owned by your institution.*

The following is an example of overreaching language presented by a vendor:

"You hereby grant Vendor a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sublicensable, and transferable license to use, distribute, reproduce, modify, prepare derivative works of, perform, and display Your Content in connection with the Services and Vendor's business, including for promoting the Services, in all media now known or hereafter devised, and through any media channels."

**Additional notes for Protection of Your Content section:**

## 9. Data Security/ User Information



**This section is particularly important if the vendor will receive end user data.**

*Ensure that the license agreement indicates that adequate data security measures are in place and requires end user data be treated confidentially.*



Who has access to your data?

Where is your data stored?

What is the hosts data recovery strategy?

## Data Security/User Information (Continued)



How long will it take for you to get your data back if you stop using their service, and how will it be delivered?

Does the license agreement address breaches of data security obligations?

**Additional notes for Data Security/User Information section:**

## 10. Infringement

*Ensure that the vendor provides a warranty against the vendor's infringement and defends the institution against those claims to avoid lapses in the ability to use the adaptive courseware.*



Are the procedures, time, and cost to remedy infringement (e.g. modifying the courseware so that it becomes non-infringing and that the courseware performs to its original standard) clearly stated?

**Additional notes for Infringement section:**

## 11. Source Code

*Ensure that you have the contractual right to access the source code if the institution will be modifying the licensed courseware. Clearly define how the source code may be used. Don't assume the rights granted respecting the object code are sufficient.*

**Additional notes for Source Code section:**



## 12. Breaches

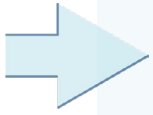
*Ensure that the institution has a sufficient opportunity (typically 30 days) to cure any breach (e.g. non-payment or unauthorized usage).*

**Additional notes for Breaches section:**



## 13. Open Source

*Ensure that you know whether the adaptive courseware vendor incorporates open source code and understand what special terms may apply as a result (e.g. terms arising from GNU GPL Open Source license).*



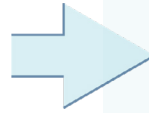
**This is particularly important if your institution plans to modify or redistribute the adaptive courseware.**

- If the adaptive courseware incorporates open source code, require the vendor to make a representation in the license agreement that the vendor has and will comply with the terms and conditions of any open source usage.
- If the vendor claims that the adaptive courseware does not incorporate open source code, require the vendor to make representation that it hasn't (or won't) use open source code.

**Additional notes for Open Source section:**

## 14. Limitations of Liability

*Ensure that the license agreement does not limit the vendor's liability for breaches or losses that might be particularly sensitive or costly to the institution, such as a vendor's breaches of confidentiality or privacy.*



**Vendors typically attempt to limit their liability in license agreements.**



Are you clearly informed about liability caps, exceptions and waivers of certain categories and types of damages?

**Additional notes for Limitations of Liability section:**

## 15. Name and Logo

*Ensure that the license agreement only permits the vendor to use your name and logo in manners that are acceptable to you.*



Is it acceptable for the vendor to use your name and logo, for instance, on marketing materials or on its website?

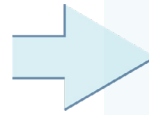
**Additional notes for Name and Logo section:**

## 16. Documents Incorporated by Reference

*Ensure that you have reviewed other documents “incorporated by reference” as the terms of these outside documents are legally part of your license agreement.*

### THESE CAN INCLUDE:

- **Terms of use** (sometimes found on vendor’s website)
- **Service level agreements (SLAs)**
- **Maintenance agreements**



**These are additional documents referenced in your license agreement.**

**Additional notes for Documents Incorporated by Reference section:**

### Questions?



Find more resources the [Assets Page](#)

For questions, contact [resources@everylearner.org](mailto:resources@everylearner.org)