Negotiation of E-Resource Licensing & Pricing Terms
ALCTS Webinar
Presented May 7, 2014 by Abbie Brown

Questions and Answers

Q: **Figuring out, to whom do you express that anger?** I ran into JUST THAT with a vendor, refusing to give me a price quote in a timely manner. Ugh.

Often, I’m expressing that anger to the sales rep, who may not be responsible for the problem. For instance, I was angry last year with a vendor on a whole host of issues, but one of them was the length of time it took to get a price quote. The sales rep had to forward that request to another office, and the delays were out of his control, but they were forcing me to make exceptions for this vendor that I wasn’t making for other vendors, and that was not something I could continue to do.

The sales rep often has to be the front line support for myriad back offices who don’t do their jobs, so it’s important that your expressed anger is clear and concise and factual, not pointing fingers when you don’t know exactly who is the problem. It may be that your sales rep is your ally in solving the problem of delayed price quotes, but needs you to make the noise and be the squeaky wheel or the problem will never get fixed.

Q: **Do you have language to cover an exit clause in case your institution needs to back out of a license?**

As mentioned by another participant in a different question, there is funding contingency language in the new draft of the CRL Model License that you can use. I’m copying it here, with all credit to those who put this together:

“Early Termination for Financial Exigency. The Licensee may terminate this Agreement without penalty if sufficient content acquisitions funds are not allocated to enable the Licensee, in the exercise of its reasonable administrative discretion, to continue this Agreement. In the event of such financial circumstances, Licensee agrees to notify Licensor of the intent to terminate the Agreement as soon as is reasonably possible, but in any case, no less than \[X\] days prior to next payment date.”

Q: **What did she mean by price caps when receiving quotes?**

I responded to this in the webinar, but I was talking about the formal quote process required by my public university’s procurement policies. If the item is not sole source and is under the set amount, I must get price quotes from each vendor. But Procurement will allow me to send those Requests for Quote with certain stipulations. For instance, I can put in the quote request that we can keep the product with the same vendor for 3 years if the price increase isn’t raised above 3% annually. Many vendors will agree to this in order to keep our business.

Q: **I ask for an explanation if the renewal is more than 5% increased from year to year. If they don’t have a reasonable one, I’ll ask for a decrease. What is your rule of thumb for asking for price decreases?**

I responded to this in the webinar, but I actually set my sights lower, at 3%. If it’s over 3%, I generally ask about it. However, I find that keeping track of the price increases year to year is helpful in picking my battles. If the increase is 5%, but I usually pay no more than 2-3%, I will definitely ask. If the increase is 5% and I usually pay 5%, I will ask but I won’t press it.
Q: Do you have any clause recommendations to watch out for? Or to include?
Indemnification and governing laws are two sticky points for me at a public university. There are probably lots of others.
I really recommend reading through the License Agreement Checklist at the CDL (http://www.cdlib.org/gateways/vendors/checklist.html) as they discuss in detail what to look for, what should be included, and what should not. Far more info than I could provide myself! It’s a great resource, and kudos to those who put it all together.

Q: Can you leave us a small bibliography we could go back to it in case we need it?
There was a list on the final slide, but here is the list again:
• CRL/LIBLICENSE: liblicense.crl.edu
• CDL website: cdlib.org
• SERU: niso.org/workrooms/seru
• Getting to Yes, book by Roger Fisher & William Ury
This is by no means comprehensive. There is a lot of information out there!

Q: Have you ever done a Contract of Adhesion when you cannot come to an agreement over a license agreement?
I have not, though it’s been a long time since I’ve had a major disagreement on a license that we could not work out and that was not a dealbreaker for the campus.

Q: How do libraries know that they are getting the best possible deal?
I responded to this in the webinar. It’s such a hard question to answer. I will need a lot more experience in this field before I’m convinced that I’m not leaving money on the table somewhere in the process at least some of the time.
Generally, however, I will ask for what I want first, and if they decline something, I will push for a justification on the matter, and that’s it. I don’t go much further than that unless I have a reason to do so, or I might send an email with all the details and ask that they forward it up to their managers. It probably won’t do anything this year, but maybe other libraries will have pushed back on the same issue and the managers will eventually listen.

Q: It seems that vendors tend to not share their prices prior to trials. How can you get them to be more transparent so you know what is legit for consideration budget-wise, prior to actually needing a quote?
Wow, I have not yet encountered a vendor that wouldn’t release price information to me if I asked for it, trial or not, so I don’t think this is widespread. Or it isn’t in the academic market. I’m interested to know who these vendors are.
It’s a pretty pushy sales rep who would try to get a trial before giving out price information, and my response would be to push back just as hard. That might mean explaining that library purchasing processes can be bureaucratic and that this isn’t the way we operate. (I would try to explain this gently at first, since I would wonder if they’re even experienced with libraries at all and instead more familiar with corporate markets. But I would get more aggressive the longer I had to explain this.) Nothing is going to happen, not even a trial, unless I get the pricing information first, and that’s only the first step. I will contact them if a trial is wanted. And if this still resulted in stalling, I would escalate it to the sales manager/VP/other boss (by looking for their website or more intensive detective work) and
complaining. This rep is not getting them more business this way, and he should be told not to do this. If the sales manager told me that this was the company’s policy, I would consider that a red flag for working with this company at all, and wonder what else they would try to do. Of course we shouldn’t have to trial anything that we don’t even know we can afford.

Q: CDL model license has early termination language and funding contingency language. Great to know. Thank you!

Q: How do you feel about contract restrictions re:discussing pricing with staff or other libraries? I responded to this question in the webinar, but I’ll restate it: I don’t have a problem with this, and in fact my office has had a longstanding policy of being sensitive about cost information and pricing as a general rule. Any data that we have on a wiki is behind a password wall. It is accessible to selectors and staff who need to use it, but we often mark the actual documents as “sensitive”. I will respond to anonymous price surveys, however.

Q: Any pointers on statements to support a request for lower prices? You mentioned facts & figures? I like to put in a statement that talks about the status of the library budget. If the campus has had to make cuts, I’ll mention that and even a percent or dollar figure of cuts that they have to make. I have one pool of funding that hasn’t had an increase in six years, so I’ll mention that and tell them that every dollar we pay in inflation has to come from cuts to another resource. Vendors have heard most of these stories before, so I don’t need to pull heartstrings, but sometimes a justification of some kind is needed by the vendor’s middle management, so I put it in. It may make a difference or not. Facts and figures are especially important if what you’re objecting to is a pattern of price increases that are unsustainable or out of line with the market. In that case, I tell them in detail about the trend of price increases, and I might tell them that I handle multiple resources in the same market that do not have the same trend of increases, if that’s true.