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8	<b>Assessment</b>	<ul style="list-style-type: none"> <li>• AD for Collections, Research, and Scholarly Communications</li> <li>• Scholarly communications librarians</li> <li>• Acquisitions / electronic resources librarian / collection analyst</li> <li>• Assessment specialist (s)</li> </ul>

The negotiation team, consisting of the Associate Dean (AD) for Collections, Research, and Scholarly Communications, scholarly communications librarians, and acquisitions, was focused on the overall goal: promoting OA publishing without increasing overall costs. It was not easy to incorporate grants in the payment process of the OA journal agreements due to internal workflow challenges. Therefore, the negotiation team, with input from the research accounting office, decided to negotiate within the Libraries’ budget. It was helpful that the Libraries had cancelled some low-usage titles prior to the negotiation, and the overall subscription fee, which serves as the base, was already set at a reasonable level. The negotiation team obtained historical APC spend data from the publisher and added the amount to the subscription spend to come up with the reservation point, or the least attractive offer that the Libraries would be willing to accept. The AD reviewed peer institutions’ negotiation outcomes and set the target for the annual price increase caps. The negotiation team also reviewed faculty publication patterns and the official APCs so that they could assess how transparent and reasonable the publishers’ offers were. The Libraries chose to receive publisher offers first, rather than making proposals from the Libraries’ side, due to timing of the offers, resource constraints, past negotiation experiences with publishers, and also because the negotiation team’s strategy was straightforward.

As Table 2 shows, the Libraries’ communication on these negotiations was ongoing -- before, during and after negotiations. These were not contentious negotiations. Therefore, the Libraries’ Public Relations and Marketing unit was most heavily involved at the announcement stage. It was helpful that the Libraries had already made a public announcement on a large budget cut (The Pennsylvania State University, 2020), to set the stage for negotiations. Throughout the negotiations, the AD for Collections, Research, and Scholarly Communications provided a status update at relevant meetings. Scholarly communications librarians also communicated and provided workshops on the institution’s OA policy and related matters so that others, particularly liaison librarians, were informed.

## Essential Terms

The contractual terms needed for OA journals are different from those needed for subscription journals. For subscription licensing agreements, several excellent model licenses exist (see, e.g., California Digital Library, 2019; Canadian Research Knowledge Network, 2016; Jisc, n.d.-a). Many of the terms included in these model licenses for subscriptions are applicable to OA journal agreements. However, for OA journal agreements, additional terms need to be negotiated depending on the nature of the agreement. Libraries can gain insights from existing principles and guidelines (ESAC Initiative, n.d.-b; Jisc, n.d.-b; LIBER, 2017; MIT Libraries, 2020; Office of Scholarly Communication, University of California, n.d.-a, n.d.-b; UC Publisher Strategy and Negotiation Task Force, 2019) and agreements that are registered via ESAC Initiative (ESAC Initiative, n.d.-a). There are different transformative models (Hinchliffe, 2019), and contract and licensing experts need to be familiar with different OA approaches and secure essential terms. One way to reduce workload is to start with one of the model licenses (see, e.g., California Digital Library, 2019) and make necessary revisions by adding terms related to transformative OA agreements.



Publishers are likely to want to initiate drafting contracts from their side using their language so that they are able to anchor contracts with their ideal terms. While this might save some work for libraries, especially if licensing capability is limited within the library, it is important for libraries to set their own goals and negotiate essential terms for OA journal agreements. Table 3 shows essential terms for read and publish transformative agreements based on recent experiences at PSU and existing principles and guidelines discussed in the literature review section of this study. Not all terms were secured at PSU. However, the negotiation team considered them during the recent publisher negotiations.

**Table 3**  
*Key Terms for Read & Publish Transformative Agreements*

Terms	
<b>Unique to Read &amp; Publish Transformative Agreements</b>	<ul style="list-style-type: none"> <li>• Content (title lists to be added in the Appendix of the Agreement):                             <ul style="list-style-type: none"> <li>○ Titles with read access</li> <li>○ Titles eligible for OA publishing (negotiate full list)</li> <li>○ Titles not eligible for OA publishing (if necessary)</li> </ul> </li> <li>• Default OA publishing (with an opt-out option for authors if necessary)</li> <li>• Availability of retroactive conversion to OA during the term</li> <li>• Unlimited publishing (goal)</li> <li>• Fees and discounts:                             <ul style="list-style-type: none"> <li>○ Cost neutral total fee (The amount should be the same or less than the combined total of the current subscription fee and APCs payment.)</li> <li>○ No double payments (The publisher should not charge for reading and publishing fees for the same content.)</li> <li>○ Transformative – the goal is to someday eliminate subscription-based reading fee:                                     <ul style="list-style-type: none"> <li>▪ Annual reading fee, decreasing during the term</li> <li>▪ Annual publishing fee, increasing during the term</li> </ul> </li> </ul> </li> <li>• Authorized authors for OA publishing                             <ul style="list-style-type: none"> <li>○ Usually corresponding authors</li> <li>○ Obtain discount on APCs for other authors</li> </ul> </li> <li>• Copyright – Authors retain copyright in their articles. The publisher licenses them under the Creative Commons Attribution license CC-BY.</li> <li>• Publisher’s responsibilities:                             <ul style="list-style-type: none"> <li>○ Support &amp; training to promote OA publishing</li> <li>○ Identify eligible authors and eligible articles</li> <li>○ Register the article's DOI with CrossRef</li> </ul> </li> </ul>
<b>All Agreements</b>	<ul style="list-style-type: none"> <li>• Parties to the agreement, e.g. the university &amp; the publisher</li> <li>• Content (title lists, and dates covered in the Appendix)</li> <li>• Authorized sites</li> <li>• Authorized users</li> <li>• Contract term (length of the contract)</li> <li>• Fees and discounts:                             <ul style="list-style-type: none"> <li>○ Total fee</li> <li>○ Annual fee</li> <li>○ Other ongoing fees, e.g. access fee; indicate any waived fees</li> <li>○ One-time fees; indicated any waived fees</li> <li>○ Annual price increase caps</li> <li>○ Negotiated discounts:                                     <ul style="list-style-type: none"> <li>▪ Subscription fees</li> </ul> </li> </ul> </li> </ul>

	<ul style="list-style-type: none"><li>▪ Deeply discounted print</li><li>▪ APC discounts and conditions, e.g. corresponding authors</li><li>• Payment &amp; invoicing terms</li><li>• Access conditions, e.g.:<ul style="list-style-type: none"><li>○ Unlimited simultaneous user</li><li>○ Perpetual access</li></ul></li><li>• Authentication method</li><li>• Copyright – Authors retain copyright in their articles.</li><li>• Authorized uses, e.g.:<ul style="list-style-type: none"><li>○ Display, copy, link</li><li>○ Classroom use, course reserves, course packs</li><li>○ Scholarly sharing with third parties</li><li>○ Text &amp; data mining</li><li>○ Inter library loan (ILL) in accordance with Sections 107 and 108 of the U.S. Copyright Act.</li><li>○ Fair use, i.e., no diminution of rights</li></ul></li><li>• Publisher obligations, e.g.:<ul style="list-style-type: none"><li>○ Content availability &amp; reliability</li><li>○ Support &amp; training</li><li>○ Problem solving expectations</li><li>○ Handling of transfer titles</li><li>○ Title lists (NISO KBART-compliant)</li><li>○ Usage statistics (COUNTER compliant)</li><li>○ Privacy protection of end users</li><li>○ No digital rights management (DRM)</li><li>○ No digital watermarking</li><li>○ No “click-through” licenses for end users</li><li>○ Annual OA report (to see progress and for future negotiation):<ul style="list-style-type: none"><li>▪ Number of OA articles by all authors</li><li>▪ Number and list of OA article citations by authors at the institution</li></ul></li><li>○ Automatically deposit accepted manuscripts in institutional repositories immediately upon publication or will provide mechanisms that facilitate deposit</li></ul></li><li>• Early termination for financial hardship &amp; breach</li><li>• Warranties:<ul style="list-style-type: none"><li>○ Free from defect</li><li>○ Accessibility (W3C Web Accessibility Initiative guidelines)</li></ul></li><li>• Indemnities</li><li>• Governing law</li><li>• Dispute resolution and venue</li><li>• Force majeure</li><li>• Severability</li><li>• Notices (customer &amp; publisher contacts)</li><li>• Do not sign a non-disclosure agreement (NDA)</li></ul>
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Note: This model does not involve grant funds.

Libraries should insist on publisher support and training to promote OA publishing. For example, authors should be automatically directed toward publishing OA (or default OA) although an opt-out option can be provided if it is necessary. With a transformative agreement, authors should not be asked to pay additional fees such as APCs. Any fees mistakenly charged should be refunded to the library. If an author makes a mistake and publishes behind the paywall, the author should be allowed to retroactively convert the article to OA during the term of the contract. It is important that the library plays a role in raising awareness of a read & publish agreement and collaborates with the publisher in this effort because library employees, particularly liaison librarians, have relationships with instructional faculty. A publishers’ web interface alone is not enough to fully support authors in promoting OA publishing. For this

reason, liaison librarians need to work closely with scholarly communications librarians and collaborate on OA publishing outreach efforts.

Many of the terms used for traditional subscription agreements are also important for transformative agreements as shown in Table 3. Libraries might mistakenly overlook perpetual access right when they are negotiating OA journal agreements, assuming that all OA deals automatically provide permanent access to the content. Perpetual access term, however, is essential to secure sustainable access to content regardless of the OA status (Projekt DEAL, n.d.). Additionally, authors should retain copyright in their articles in all agreements. Furthermore, the definition of authorized sites and users is also critical, as it determines who is eligible to publish OA under the agreement.

Libraries are still at the experimental stage with transformative agreements. The institutions with smaller publication output can more comfortably negotiate these agreements because their existing APC payments and expected volume of OA publishing are small, resulting in less risk for the publisher and the library, thus leading to lower fees. At the same time, libraries should also monitor the progress of OA and negotiate persistently as OA content grows so that they can avoid paying for the open portion of the product.

Publishers care about the “big envelope”, or the total fee. Libraries should not assume that annual fees need to increase each year. As open content increases, the financial burden for libraries should be reduced. Incorporating grant funds will also help libraries, as exemplified by the University of California (Office of Scholarly Communication, University of California, n.d.-a). At the same time, the process requires additional payment workflows to handle the multi-payer model. The cost benefit analysis needs to consider not only the financial benefits but also the potential cost of collaboration overload. For individual libraries, it might be prudent to start with a simple agreement that the library can manage within its budget.

## Conclusion

Libraries have different priorities and need to set their own goals, although they can learn from others’ experiences. They have different levels of publishing output and need to choose the appropriate publishing partner so that the publishing fee is within the institution’s budget. For some libraries, the goal of transformative agreements is OA advancement, with less concern on the costs. For others, they need to achieve both cost containment and OA advancement. Either way, libraries need to foster necessary intellectual capital, including motivated people with skills, helpful relationships; and organizational capital such as processes and workflows that support the people involved in publisher negotiations. It might make sense for some libraries to work through a consortium if the library lacks manpower or expertise. Not all libraries enjoy first-mover advantage. Sometimes it is advantageous to observe, collaborate, and achieve goals by learning from others. It is encouraging to see that libraries are sharing their experiences in negotiating agreements with others. More transparency concerning scholarly publishing practices and business terms will hopefully lead to cost containment for libraries and a more open world.

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