November 29, 2012

To: ARL Directors and Collection Development Contacts

From: Celeste Feather, ARL Licensing Initiative Program Manager, LYRASIS

Re: University Press Scholarship Online Offer from Oxford University Press, Fall 2012

**Offer Background and Summary**

I am pleased to report that we have completed our third negotiation on behalf of the Association of Research Libraries. We have worked hard to develop an offer from Oxford University Press for the **2011-2013** content hosted on their University Press Scholarship Online (UPSO) site. As with the most recent De Gruyter/Harvard offer, this UPSO offer is based on a sliding scale discount so that as more libraries participate, the better the prices become. **The offer deadline by which libraries need to express their intentions to order at specific discount levels is** **February 28, 2013. Final orders will be confirmed and invoiced by March 15, 2013.** This offer presents a tighter timeframe to completion than the first two offers from Project MUSE and De Gruyter/Harvard, but Oxford has requested that we end the offer in time for their fiscal year end close on March 31.

This UPSO offer provides many flexible opportunities for purchasing content with perpetual access by year, subject, and publisher. One key point of which everyone should be aware is that the years of content at UPSO (i.e. 2011-2013) are not an exact match to the publication years of the titles. Oxford uploads new content to UPSO three times each year, in January, May, and September. The uploads generally contain content published in that same year, but small amount of the content will be older. For example, the 2012 uploads may have some content from 2009 or 2010, but the majority of the titles will have publication dates of 2012. OUP reports that they add this older content in answer to requests by libraries for specific titles. When a new partner press joins UPSO, the first upload of content from that press will contain all of the backlist volumes that the press wants to host at UPSO regardless of the year of publication. The subsequent uploads from that press will contain mostly content that is published in the current year. In recognition that the older titles are not as appealing as new ones, OUP has reduced the cost for the older titles by 20% when they set the list price for each collection. All of our group discounts will be off that already reduced cost for the older titles in the 2011-2013 uploads.

UPSO now offers 25 subject collections:

|  |  |  |
| --- | --- | --- |
| Anthropology | Law | Physics |
| Archaeology | Linguistics | Political Science |
| Biology | Literature | Psychology |
| Business/Management | Mathematics | Public Health/Epidemiology |
| Classical Studies | Music | Religion |
| Economics and Finance | Neuroscience | Social Work |
| Education | Palliative Care | Society/Culture |
| Film, Television/Radio | Philosophy | Sociology |
| History |  |  |

University presses that now participate in UPSO are:

American University in Cairo Press

University of California Press

University of Chicago Press

University of Edinburgh (UK) Press

University Press of Florida

Fordham University Press

Hong Kong University Press

University Press of Kentucky

University of Manchester (UK)

Oxford University Press

Policy Press (from the University of Bristol in the UK)

The participation thresholds for the offer are as follows. OUP has done extensive analysis of its existing business within the US and Canada and believes that these levels are attainable. They report that 60 ARL libraries have purchased Oxford Scholarship Online collections in the past two years. This Oxford Scholarship Online content is now part of the OUP collections hosted on UPSO.

Up to 49 libraries

50-74 libraries

75-99 libraries

100-125 libraries

126+ libraries

Discount levels vary with the deepest discounts at 60% off list on the purchases of the complete 2011 or 2012 uploads. For a complete purchase of 2013 uploads, the deepest discount is 50% off list price. All of the pricing details are set forth in the spreadsheet located at <http://bit.ly/PEDQh9>. There are 5 pricing tiers in this UPSO offer, based solely on FTE counts. There are ARL libraries in each tier. We are assured that the prices in this offer are the best available from Oxford, as we spent a great deal of time working with them to arrive at the levels of discount presented here. The costs per title in the various collections are higher than we negotiated for the Project MUSE and DeGruyter/Harvard collections, but the original list prices for Oxford and some of the other high profile presses at UPSO are higher than they are for the MUSE/UPCC and Harvard presses. The greatest % discount off list at 50% for 2013 and 60% for 2011/2012 are actually a little better than the % discounts off list we’ve seen in the two earlier offers from MUSE and De Gruyter.

**Action Items**

1. Review the pricing spreadsheet at <http://bit.ly/PEDQh9>.

2. Review the ARL/LYRASIS central license for UPSO at <http://bit.ly/Tt0RHt> and be prepared to agree to abide by the terms of this license at the point of an actual order. If amendments are needed to specify state law in the case of public institutions, contact me (celeste.feather@lyrasis.org) so that we have time to facilitate those amendments.

3. Determine collections of interest and the price point (% discount off list) that would enable you to make a purchase.

4. Complete the Expression of Interest Form at <http://bit.ly/S05TcX> by **February 28, 2013, indicating the % discounts needed for each collection of interest that would enable your library to place an order**.

5. Be prepared to confirm a final order by March 15, 2013. As a reminder so no one is caught by surprise, the usual 5% administrative fee as negotiated between ARL and LYRASIS will apply to all orders. If we reach a total order amount of $1.5 million, then the % fee will start to decline.

**License Negotiation**

LYRASIS has signed a [central group license](http://bit.ly/Tt0RHt) with Oxford University Press. All libraries purchasing UPSO content through LYRASIS will be covered by the terms of this agreement. LYRASIS will be responsible for obtaining each institution’s agreement to abide by the terms of this central license, which we will do as part of the routine ordering process. We recognize that legal offices at some institutions will require state-specific language, and we can facilitate amendments of this type to the central license when absolutely necessary. **If you have local requirements that necessitate a special amendment to the central license and believe that you will be making a purchase, please let me know as soon as possible so that we can reach resolution for each special circumstance.**

The license negotiations with Oxford were especially challenging and deserve some additional discussion here. We pressed hard with the ARL license specifications on a number of points, several times, but in the end managed to create a license that we believe adheres to the intention of the ARL requirements. For the purposes of clarity and general awareness of some of the larger issues, what follows is a description of the key license issues that emerged in our negotiations.

1. Oxford refused to include mention of **Canadian copyright law** as required by the ARL license specifications. They did not want to bear the responsibility of monitoring laws outside the United States. The acceptable compromise was to itemize all of the rights that Canadian institutions have but not mention Canadian law. The Attachment for Canadian Libraries at the end of the main license contains the language regarding usage rights that will pertain to any institution in Canada.

2. Use of the licensed content is not permitted in print course packs without paying royalties, but after lengthy discussion we did succeed in getting permission to use and temporarily store **excerpts of the works** (not just links) in e-reserve and course management systems.

3. The **scholarly sharing** provision prompted quite a lengthy discussion too. In the end Oxford agreed to the ARL language about users being able to make Fair Use of tables, figures, and excerpts of UPSO content as long as the copyright to these tables, figures, etc. is held by OUP or the partner presses at UPSO.

4. **Governing law** was a particularly thorny issue, as the ARL requirements specify silence on the matter. We worked out a compromise on this issue by accepting the clause about New York governing law that will be used to resolve any disputes between LYRASIS and OUP, and OUP finally did agree to remain silent about governing law with respect to any participating libraries.

5. **Confidentiality** was another difficult provision. Oxford finally agreed to state that the license terms and pricing are not deemed to be confidential information. There still is a confidentiality section in the license that governs other types of information that might be passed between OUP, LYRASIS, and a library.

Other important points of successful negotiation in this license are:

* ADA compliance
* Electronic ILL (but at the usual chapter level)
* Indemnification by OUP
* Local loading of data by an institution or a trusted third party on behalf of an institution
* Text mining rights
* Perpetual use and local archiving rights
* Provision of copy of data upon termination
* No annual hosting fee for content purchased as long as this group agreement is in place

**Summary**

All in all we believe that we were very successful at negotiating acceptable license terms with OUP for this UPSO offer. The opportunity to purchase forthcoming 2013 content at very deep discount levels is one that should meet the needs of many libraries, particularly those that have been accustomed to purchasing ebook packages from Oxford University Press in the past. Oxford supplies their collection metadata to book agents so that libraries can work with them regarding deduplication.

I will be glad to address any questions (celeste.feather@lyrasis.org, 800-999-8558, ext. 2954), and I look forward to working with you.



Useful links:

[UPSO 2011-2013 ebook collection pricing](http://bit.ly/PEDQh9)

[UPSO 2011-2013 title list](http://bit.ly/Wx40mX)

[LYRASIS ARL central license with Oxford for UPSO](http://bit.ly/Tt0RHt)

[Expression of Intent to Order at Indicated Price Form](http://bit.ly/S05TcX)

[University Press Scholarship Online](http://www.universitypressscholarship.com/)