

# Individual Agreement to use the Libraries Australia Search Service provided by the National Library of Australia

BETWEEN .....

.....(the "User")

[insert above, name of person who will purchase the right to use the Libraries Australia Services, and address of the User]

AND

National Library of Australia ("NLA") (ABN 28 346 858 075), a body corporate established by the *National Library Act 1960* (the NLA) of Parkes Place, Canberra Australian Capital Territory.

Dated [.....] [*The User must insert the date of the Agreement.*]

## 1. Definitions

1.1. In this Agreement:

- (a) "Libraries Australia Search Service" is described Clause 3;
- (b) "Libraries Australia Databases" mean the databases in Clause 3;
- (c) "GST" has the meaning given by the GST Law, and includes any additional tax, penalty tax, fine, interest or other charge;
- (d) "GST Law" means the same as in the *A New Tax System (Goods and Services Tax) Act 1999*;
- (e) "Libraries Australia Services" means all services provided to a User under this Agreement;
- (f) "Tax Invoice" means a tax invoice complying with the requirements of the GST Law;
- (g) "Working Days" means all days except Saturdays, Sundays and public holidays in the Australian Capital Territory;
- (h) "WorldCat" is the world's largest network of library content and services, hosted in the United States by the Online Computer Library Center (OCLC).

In interpreting these definitions, a singular word includes the plural and vice versa.

## 2. Term of Agreement

This Agreement operates as a new Agreement (for new Users) or as an amendment to an existing Agreement (for existing Users), as set out in this clause:

- (a) for new users, this Agreement commences on the date it is signed by the User and continues for one year from that date, and thereafter will be automatically extended annually unless either party notifies the other party in writing sixty (60) Working Days

prior to the commencement of the forthcoming extension date that it does not agree to the extension; and

- (b) for existing users, this Agreement commences on 1 July 2011, and continues for the period set out in clause 2(a).

### **3. Libraries Australia Search Service**

- 3.1. The User wishes to purchase the right to use the Libraries Australia Search Service and the NLA agrees to provide the following right(s) in accordance with this Agreement:

As part of the Libraries Australia Search Service, including, at July 1 2009, unlimited searches of:

Australian National Bibliographic Database (ANBD)

Singapore National Union Catalogue (SILAS)

Te Puna (New Zealand)

Free search targets including the Library of Congress and the British Library

Consortium of [British] University Research Libraries (CURL) OPAC

OCLC's WorldCat

Powerhouse Museum

National Film and Sound Archive.

Other unlimited use databases may be added to this list from time to time.

- 3.2. Subject to clause 3.3, a right to use the Libraries Australia Search Service under this Agreement gives the User the right to:

- (a) access and search the Libraries Australia Databases;
- (b) store and print data which has been copied or received from the Libraries Australia Databases; and
- (c) access documentation about the Libraries Australia Search Service on the website at <[www.nla.gov.au/librariesaustralia/about.html](http://www.nla.gov.au/librariesaustralia/about.html)>

solely for the purpose of the User's own study and research.

- 3.3. Libraries Australia Services are sustained through national cooperation and rely on the practice of reciprocity in all dealings between member libraries, including the User. As such, members should ensure that they will not engage in activities that diminish the value of Libraries Australia Services. The User must not:

- (a) sell, trade or in any way provide data copied or received from the Libraries Australia Databases to any other person or entity; or
- (b) allow any other person to access the Libraries Australia Databases.

- 3.4. The User consents to the NLA providing the User's name and a statement of the User's rights under this Agreement to the licensor of any database not owned by the NLA which has been made available for use.

### **4. Charges and Fees**

- 4.1. Each individual User joining the Libraries Australia Search Service is charged a subscription fee of \$AUD55 per annum, including GST.
- 4.2. The subscription fee covers unlimited use of the Australian National Bibliographic Database (ANBD).
- 4.3. The User must within fourteen (14) Working Days of receipt of a Tax Invoice from the NLA pay the NLA the Subscription amount specified.

- 4.4. The Charges payable to the NLA under this Agreement are inclusive of GST.
- 4.5. The NLA may vary the Charges throughout the Term on sixty (60) Working Days prior notice to the User of the Charges variation.
- 5. Technical Changes**
- 5.1. The NLA may from time to time improve or modify the documentation, communications, equipment, operations, or other technical aspects of the Libraries Australia Search Service.
- 5.2. The NLA will give the User at least sixty (60) Working Days notice of improvements or modifications that will require changes in operating procedures by the User, except for any such improvements or modifications that are urgently required for emergency repairs or to maintain the provision of the Libraries Australia Search Service.
- 6. Intellectual Property**
- 6.1. Title to all intellectual property existing in, or in relation to, the Libraries Australia Search Service (including in the Libraries Australia Databases and software used to provide the service) remains vested in the NLA or where applicable in the licensor of the particular database or software.
- 7. Indemnity**
- 7.1. The User must at all times indemnify the NLA, its officers, employees and agents (“**those indemnified**”) from and against all loss, costs and expenses (including legal costs and expenses on a solicitor and own client basis) or liability whatsoever incurred or suffered by any of those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss, cost, expense or liability was caused or contributed to in any way by any wilfully wrongful, unlawful, or negligent act or omission of the User, or its officers, employees, agents, subcontractors (including Specified personnel) or invitees in using the Libraries Australia Services.
- 7.2. The NLA may enforce the indemnity in clause 7.1 in favour of the persons specified in clause 7.1 for the benefit of each of such persons in the name of the NLA or of such persons.
- 7.3. The User’s indemnity in this clause will be reduced to the extent that the loss, cost, expense or liability was contributed to by the wilfully wrongful, unlawful or negligent act of the NLA, its officers, employees or contractors (except the User), as substantiated by the User.
- 7.4. This indemnity will survive the expiration or termination of the Agreement.
- 8. Applicable Law**
- 8.1. This Agreement is governed by the laws for the time being in force in the Australian Capital Territory and the parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.
- 9. Termination**
- 9.1. The NLA may terminate this Agreement immediately, upon written notice to the User, in the event of a breach by the User of this Agreement.
- 9.2. Subject to clause 9.1, either party may, terminate this Agreement upon thirty (30) Working Days prior written notice to the other party if the other party:
- (a) is in breach of an obligation under this Agreement; and
  - (b) has failed to remedy the breach within seven (7) Working Days of receiving a prior notice from the other party to remedy the breach.
- 9.3. Either party may terminate this Agreement upon sixty (60) Working Days prior written notice to the other party.

9.4. In the event of a termination, the User's liability to pay the Charges specified at Attachment B will abate proportionally to the timeframe of the termination. For avoidance of doubt, the User is liable for payment of all Charges up to the date of termination specified within the written notice.

9.5. Immediately upon termination or expiration of this Agreement, all rights granted to the User under this Agreement are terminated.

**10. Counterparts**

10.1. The Agreement may be signed in counterparts, meaning that execution is complete when each party holds a copy of the Agreement signed by the other party.

<b>SIGNED by</b>	
.....	.....
<i>print above <b>NAME</b> of User (if the User is a natural person) OR print name and title of person who is authorised to sign this Agreement on behalf of the User (if the User is an organisation)</i>	<i>Insert above <b>SIGNATURE</b> of User</i>
in the presence of:	
.....	.....
<i>Name of witness to signature</i>	<i>Signature of witness to signature</i>
<b>SIGNED for and on behalf of the NATIONAL LIBRARY OF AUSTRALIA</b>	
by .....	.....
<i><b>NAME</b> of person signing for and on behalf of the National Library of Australia</i>	<i><b>SIGNATURE</b> of person signing for and on behalf National Library of Australia</i>
in the presence of:	
.....	.....
<i><b>NAME</b> of witness to signature</i>	<i><b>SIGNATURE</b> of witness to signature</i>