

Commercial Use Agreement for Libraries Australia Services provided by the National Library of Australia

BETWEEN (the "User")

(Australian Business Number (ABN):.....)

of.....

[insert above, name of corporation/statutory body/Department of State who will purchase the right to use the Libraries Australia Services, and ABN 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) "Agreement" includes these terms and conditions and Attachments A, B and C;
- (b) "GST" has the meaning given by the GST Law, and includes any additional tax, penalty tax, fine, interest or other charge;
- (c) "GST Law" means the same as in the *A New Tax System (Goods and Services Tax) Act 1999*;
- (d) "Libraries Australia" is the brand name provided to a suite of services supplied by the NLA.
- (e) "Libraries Australia Services" refers to services described in the attachment to this Agreement entitled "Attachment A Description of Libraries Australia Services";
- (f) "Libraries Australia Client" means the OCLC Windows Intelligent Bibliographic Workstation (WinIBW) software;
- (g) "Libraries Australia Client Licence" means the licence referred to in Attachment C;
- (h) "Libraries Australia Databases" mean the databases described in the attachment to this Agreement entitled "Attachment A: Description of Libraries Australia Services";
- (i) "Libraries Australia Search Service (LASS)" is described in the attachment to this Agreement entitled "Attachment A: Description of Libraries Australia Services";
- (j) "Libraries Australia Services" means all services provided to a User under this Agreement and includes the provision of a Libraries Australia Client Licence, if applicable;
- (k) "Libraries Australia Training Service Provider" means a person authorised by the NLA to provide Libraries Australia training;
- (l) OCLC means the Online Computer Library Center based in Dublin Ohio, USA. OCLC hosts the WorldCat service;
- (m) "Regular Customised Product" means a file of MARC21 records that is regularly extracted from the ANBD based on a file of ANBD numbers, ISBNs or ISSN numbers provided by the customer;
- (n) "Regular Scheduled Product" means a file of MARC21 records that is regularly extracted from the ANBD based on the addition or modification of a specified holding, or the modification of bibliographic records linked to a specified holding, within a specified time period;
- (o) "Tax Invoice" means a tax invoice complying with the requirements of the GST Law;
- (p) "Working Day" means all days except Saturdays, Sundays and public holidays in the Australian Capital Territory.
- (r) "Subscription" is specified in detail in the attachment to this Agreement entitled "Attachment B Libraries Australia Commercial Use Charges".

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 agreed variation 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 August 2009, and continues for the period set out in clause 2(a).

3. Libraries Australia Service

3.1 The User wishes to purchase the right to use the Libraries Australia Services, including access to search all Libraries Australia Databases.

3.2 Subject to clause 3.5, a right to use the Libraries Australia Service under this Agreement gives the User the right to:

- (a) access and search the Libraries Australia Databases;
- (b) copy or receive data from the Libraries Australia Databases onto the User's own databases;
- (c) print data which has been copied or received from the Libraries Australia Databases; and
- (d) use or distribute data which has been copied or received from the Libraries Australia Databases for commercial purposes in order to provide services to any Australian library which is a customer of the User, subject to clause 3.5.

3.3 In the case of Users who are not individuals (to be referred to in this Agreement as the "organisation") the right to access, search, copy, receive, print, use and distribute data under clause 3.2 belongs to the organisation and includes the right to allow the organisation's employees, agents and contractors to access, search, copy, receive, print, use and distribute data in accordance with this Agreement for the purposes of the organisation.

3.4 The User acknowledges that they are liable for:

- (a) any breach by an employee, agent or contractor of the restrictions imposed on the User under this Agreement; and
- (b) any loss or damage to the NLA caused by any breach referred to in clause 3.4(a).

3.5 The User must not:

- (a) sell, trade or in any way provide data copied or received from the Libraries Australia Databases to any person or organisation providing services similar to Libraries Australia Services or OCLC's WorldCat;
- (b) subject to clause 3.3, allow any other person to access the Libraries Australia Databases; and
- (c) represent itself and must ensure that User personnel, agents and contractors do not represent themselves as being employees, partners or agents of the NLA.

3.6 In the event that the NLA makes non-NLA owned databases available for the User to use as part of the Libraries Australia Service, 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 the database which has been made available for use.

4. Charges and Fees

4.1 The User must within fourteen (14) Working Days of receipt of a Tax Invoice from the NLA pay the NLA the Charges incurred by the User for the Libraries Australia Services used by the User in the invoice period in accordance with the terms set out in the document attached to this Agreement headed "Attachment B Libraries Australia Commercial Use Charges".

4.2 The User is responsible for all payments and contributions including but not limited to taxes, duties, or other Government charges, workers compensation, superannuation, sick leave, annual leave or long service leave.

- 4.3 The Charges payable to the NLA under this Agreement are inclusive of GST.
- 4.4 If payment under an indemnity to the NLA gives rise to a liability for the NLA to pay GST, the User must pay and indemnify the NLA against the amount of the GST.
- 4.5 The User agrees to pay all Charges directly arising from the improper use of the User's account numbers and passwords provided by the NLA unless such Charges result from the NLA's failure to exercise due care in preserving the confidentiality of such account numbers and passwords.
- 4.6 The NLA may vary the Charges throughout the Term on sixty (60) Working Days prior notice to the User of the Charges variation.
- 4.7 Where the amount of GST differs for any reason from the amount of GST paid or payable to the Commonwealth by the NLA, the NLA agrees to provide the User with an adjustment note in this respect within twenty (20) Working Days.

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 Services.
- 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 Services.

6. Intellectual Property

- 6.1 Title to, and ownership of, all intellectual property existing in, or in relation to, the Libraries Australia Services (including in the Libraries Australia Databases and software used to provide the services) remains vested in the NLA or where applicable in the licensor of the particular database or software.

7. Dispute Resolution

- 7.1 The NLA and User undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Agreement and agree where necessary, to use in the first instance mediation or conciliation in preference to legal proceedings.
- 7.2 Nothing in this clause 7 prevents either party from seeking urgent injunctive relief.

8. Termination

- 8.1 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.
- 8.2 Subject to clause 8.1, 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.
- 8.3 Either party may terminate this Agreement upon sixty (60) Working Days prior written notice to the other party.
- 8.4 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.
- 8.5 Immediately upon termination or expiration of this Agreement, all rights granted to the User under this Agreement are terminated.

9. Indemnity

9.1 The User must indemnify the NLA, its officers and employees from and against loss, damage, expense, liability or cost (including the cost of any settlement) incurred or suffered as a consequence of a claim or action in respect to this Agreement, where such loss, damage, expense or liability was caused or contributed to in any way by any wilfully wrongful, unlawful, or negligent act or omission of the User, its officers and employees.

9.2 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.

10. Applicable Law

10.1 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.

11. Counterparts

11.1 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.

SIGNED by

.....
print above NAME 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)

.....
Insert above SIGNATURE of User (if User is a natural person) OR Signature of person who is authorised to sign this Agreement on behalf of the User (if User is an organisation)

in the presence of:

.....
Name of witness to signature

.....
Signature of witness to signature

SIGNED for and on behalf of the NATIONAL LIBRARY OF AUSTRALIA

by
NAME of person signing for and on behalf
National Library of Australia

.....
SIGNATURE of person signing for and on behalf
of the National Library of Australia

in the presence of:

.....
Name of witness to signature

.....
Signature of witness to signature

Attachment A: Description of Libraries Australia Services

The Libraries Australia web site at www.nla.gov.au/librariesaustralia/services.html describes the full range of Libraries Australia Services.

1. Overview of Libraries Australia Services

1.1 The Libraries Australia Services are:

- (a) the Libraries Australia Search Service;
- (b) the Libraries Australia Cataloguing Service; and
- (c) the Libraries Australia Document Delivery Service and its associated Payments Service.

2. Service Hours

2.1 With the exception of required emergency and routine maintenance and unforeseen outages, the Libraries Australia Services will be available 24 hours per day, seven days per week. This clause does not apply to the Libraries Australia Client Licence.

3. The Libraries Australia Search Service

3.1 The Libraries Australia Search Service:

- (a) allows Users to access, search, and copy or receive data into the User's system, from the Australian National Bibliographic Database and other databases which are included from time to time; and
- (b) includes delivery of MARC records by transfer over the Internet.

3.2 Description of Data Held on the Australian National Bibliographic Database

The ANBD contains over 14 million bibliographic records from many sources, including records from the Australian National Bibliography, the Library of Congress, the British Library, the National Libraries of New Zealand, Singapore and Vietnam, and records contributed by Australian libraries. There are over 42 million holding locations for material in over 1,200 libraries around Australia. The ANBD includes records containing non-roman script.

4. The Libraries Australia Document Delivery (LADD) Service (Optional)

4.1 The LADD Service provides an interlibrary loan management system for all types of libraries and allows Users to:

- (a) request the delivery of documents from supplying libraries and other organisations; and
- (b) respond to requests by other Users for documents.

4.2 The LADD Service supports the creation of requests for documents, the selection of suppliers and the tracking and management of requests. It is accessed via the World Wide Web or the ISO ILL standard 10161 (ILL protocol).

Users can create document requests by searching the ANBD to automatically include bibliographic and location data in the request. Users can view a locations directory to obtain more information about a potential supplier and can select suppliers from the ANBD holdings. Requests can also be created where the item is not on the ANBD. Other targets may be available.

The LADD Service routes requests to each supplier listed by the User in the document request. The supplier either supplies the item or passes the request onto the next potential supplier in the list.

Users can track and manage document requests as both requester and supplier and a range of management reports are available.

Information about the User, such as a delivery address and contact phone number, can be maintained on the LADD Service so that the User does not have to key this information into each document request.

Please note that Libraries Australia Users using an alternative Document delivery system need to meet the obligations outlined in the Conditions of ISO ILL Interoperability Memorandum of Understanding. The Memorandum Of Understanding is available from the Libraries Australia web site at www.nla.gov.au/librariesaustralia/forms.html.

The Libraries Australia Document Delivery Payment Service (LADDPS)

- 4.3 The LADDPS involves the NLA managing the financial transaction between the supplying and requesting library in relation to the document being requested and supplied. The LADDPS operates on the basis that the NLA:
 - (a) credits the supplying library for the amount of the charge imposed by the supplying library;
 - (b) debits the requesting library for the amount of the charge imposed by the supplying library.
- 4.4 Libraries providing gratis reciprocal services to selected partner libraries can configure or request the NLA to configure these arrangements in the LADDPS, so that no charges are generated for supply to those nominated partner libraries.

5. The Libraries Australia Cataloguing Service (Optional)

- 5.1 The Libraries Australia Cataloguing Service supports a wide range of functionality including: the ability to import records direct to the National Bibliographic Utility from any of its Z39.50 targets; the ability to script specific cataloguing functions; configuration of the user interface by each user for settings such as font size; and full Unicode compliance.
- 5.2 Users of the service must adhere to conventions for cataloguing in a network, including the Libraries Australia minimum record standard, as described at <http://www.nla.gov.au/librariesaustralia/network.html>.

6. Training

- 6.1 The User must (or where the User is an organisation, one person from the organisation who will supervise the use of the Service must) complete the training courses specified by the NLA before using the following:
 - (a) the Libraries Australia Client to add original cataloguing, and
 - (b) the Libraries Australia Document Delivery service.
- 6.2 The training courses must be conducted by a Libraries Australia Training Service Provider authorised by the NLA.
- 6.3 Charges which apply to courses conducted by a Libraries Australia Training Service Provider are set by the Training Service Provider. Users should contact the Training Service Provider for the price list, or consult the list of Training Service Providers courses and charges on the Libraries Australia web site at www.nla.gov.au/librariesaustralia/events.html#training.
- 6.4 A course is available for Libraries Australia. The course covers how to search, add holding locations and order products. Attendance at a Libraries Australia course is not required before using Libraries Australia Search.

Attachment B: Libraries Australia Commercial Use Charges to apply from 1 August 2009

1. Libraries Australia Search Service

- 1.1 New Users will be required to go through a registration process before commencing use of Libraries Australia services. Details for the process are at www.nla.gov.au/librariesaustralia/rego/index.html.
- 1.2 At the end of each financial year the User will be charged a subscription fee which is based on the search usage of Libraries Australia during the previous year or part thereof, as indicated in the table below. All charges are inclusive of GST.

Search range		Base rate		Per search
1	2,000			\$1.30
2,001	5,000	\$2,600.00	plus	\$0.66
5,001	10,000	\$4,580.00	plus	\$0.33
10,001	20,000	\$6,230.00	plus	\$0.16
20,001	50,000	\$7,830.00	plus	\$0.08
50,001	and above	\$10,230.00	plus	\$0.04

A minimum fee of \$AUD575 will apply.

Note that the GST will be added to the base rates in the above table and all fees are applied in Australian Dollars. For example, if 2500 searches are completed in a financial year the fee incurred is \$AUD2,600 + (500 x \$0.66) = \$AUD2,930 + GST.

Charges for the supply of MARC records via the Products Service are additional.

- 1.3 The subscription will be invoiced annually. All other charges will be invoiced quarterly.

2. Products Service

2.1 Regular Scheduled Products

Users who require Regular Scheduled Products will be charged a registration fee of \$AUD58.50 and \$AUD0.45 for each MARC record supplied.

2.2 One-off products

Users who require a one-off product run will be charged a set-up fee of \$AUD58.50 and \$AUD0.45 for each MARC record supplied.

2.3 Regular Customised Products

Users who require Regular Customised Products will be charged a one-off set-up fee of \$AUD58.50 and \$AUD1.50 for each MARC record supplied within a customised product.

3. Training courses

Training courses are run by authorised training agents. There is a list of Libraries Australia Training Service Providers and their course fees at www.nla.gov.au/librariesaustralia/events.html#training.

4. Documentation

Libraries Australia Manual	\$AUD45.00
Document Delivery Set of manuals	\$AUD45.00
Client Manual	\$AUD45.00

A discount of 10% will be offered when 10 or more copies of the same document are purchased at one time. All Libraries Australia documentation is also available without charge for downloading from the Libraries Australia web site.

5. Libraries Australia Client software

5.1 If required, the User may obtain a copy of the Libraries Australia Client software without charge.

Attachment C: Libraries Australia Client Licence

This Attachment sets out the terms and conditions that apply to any Libraries Australia Client Licence granted under this Agreement.

National Library of Australia (NLA)

1. The NLA grants each Licence from the date of delivery of or payment for the Libraries Australia Client, whichever is the earlier.
2. The NLA will provide copies of the Libraries Australia Client configured for access to Libraries Australia to the User.
3. The NLA will provide user documentation and updates to the documentation to the User. Maintenance support will be provided by the NLA.
4. The licence fees cover the support referred to in the above paragraph 3 and Libraries Australia Client upgrades and new releases which will be delivered to the User when they become available.
5. Installation services provided by NLA to the User comprise:
 - software distribution; and
 - installation documentation,provided to the recipient of any Licence.

NLA Conditions for the use of the Libraries Australia Client

Clause 1 - Definitions

‘**Licence**’ means each Licence granted by the NLA to the User on the terms and conditions set out in this Attachment C.

‘**Libraries Australia Client**’ means the run-time copy of the OCLC Windows Intelligent Bibliographic Workstation (WinIBW client) software, which includes:

- (i) a series of instructions for the processing of information or a database under licence made up of a systematic collection of data in machine-readable form, referred to as the ‘Program’;
- (ii) any related materials including documentation, charts, logic diagrams and listings allowing the Program to be used, referred to as the ‘Documentation’; and
- (iii) all entire or partial copies of the Libraries Australia Client and all updates and new releases.

‘**Licensee**’ means any the User which the NLA nominates for one or more Licences.

‘**Use**’ means copying all or part of the Libraries Australia Client into a machine or transmitting it to a machine for the execution of instructions or the processing of data.

Clause 1 – Interpretation

- (i) Words in the singular number include the plural and words in the plural number include the singular.
- (ii) Clause headings are inserted for convenience only. They have no effect in limiting or extending the language of the provisions

Clause 2 - Licence

- 2.1** The scope of the Licence is defined in this clause. The Licence is non-exclusive and non-transferable. The Licence will remain in force until terminated in accordance with the User Agreement between the User and the NLA.
- 2.2** The Licensee for each Licence is authorised and licensed to:
- use the Libraries Australia Client solely for the purpose of accessing and using the services of the NLA;
 - permit such use by personnel, agents and contractors of the User for the purpose of the services of the NLA; and
 - make copies of the Libraries Australia Client to the extent necessary for accessing and using the services of the NLA.
- 2.3** The Libraries Australia Client may not be de-compiled or de-assembled in whole or in part.
- 2.4** The Licensee may not license, sell, transfer, use, copy, reproduce, adapt, exploit, communicate, modify or publish the Libraries Australia Client other than set out in these conditions.

Clause 3 - Private rights and intellectual property

- 3.1** All rights relating to patents, copyright, trademarks and commercial secrets related to the Libraries Australia Client program and its enhancements, modifications and changes such as may be supplied are and remain the property of OCLC PICA.

Clause 4 – Termination

- 4.1** The User may terminate the Licence by giving minimum prior written notice of thirty (30) Working Days to the NLA.
- 4.2** The User must, during the month following the termination or expiration of the Licence, destroy the original of the terminated Libraries Australia Client, backup and any other copies, translations, compilations and merged copies in other Libraries Australia Client in order to withdraw all parts of the terminated Libraries Australia Client .
- 4.3** On written request from NLA, the User must certify that the provisions in this clause have been fully respected.

Clause 5 - Miscellaneous

The Licensee must not assign any of its rights or obligations under these conditions.

Clause 6 - Applicable law

The Licence is governed by the law of the Australian Capital Territory.