



Libraries Australia Training Services Provider Contract

National Library of Australia

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LIBRARIES AUSTRALIA TRAINING SERVICES PROVIDER CONTRACT

DATE

PARTIES

The National Library of Australia (ABN 28 346 858 075) a body corporate established by the *National Library Act 1960* (the "NLA")

[*name of party*] (the "Contractor")

RECITALS

- A. The NLA requires the provision of the Training Services to train users of the NLA's "Libraries Australia" service.
- B. For the mutual benefit of each party, the Parties agree that the Contractor will provide the Training Services for the NLA on the terms and conditions of the Contract.

OPERATIVE PROVISIONS

PART 1 - INTERPRETATION

1. INTERPRETATION

- 1.1 In the Contract, unless otherwise specified, the following words have the following meanings:

"Commencement Date" means the day on which the Contract is executed by both parties.

"Confidential Information" means information that:

- (a) is by its nature confidential;
- (b) is designated by the NLA as confidential; or
- (c) the Contractor knows or ought to know is confidential.

But does not include information which:

- (d) is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligations
- (e) has been independently developed or acquired by the Contractor, as established by written evidence.

"Contract" means the terms and conditions set out in this document, including the Schedules.

"Contract Material" means any reports and other documents and materials, in any form, to be provided by the Contractor to the NLA under the Contract or otherwise created under the Contract.

"**Contractor**" includes, where the context permits, the employees, subcontractors, agents and permitted assigns of the Contractor.

"**Control**", of a person, partnership, trust, joint venture, corporation or other entity ("**Entity**"), means:

- (a) the ability to cast or control the casting of more than 50% of the maximum number of votes that might be cast at any general meeting (or equivalent) of the Entity; or
- (b) the holding of more than 50% of the issued ordinary share capital, the equity, or other ownership interest, in the Entity.

"**Course Documentation**" means that documentation provided by the NLA to the Contractor either under **clause 16.2** or via the NLA's Libraries Australia web-site and includes information provided for the purpose of **clause 1.4 of Schedule 1**.

"**Data**" includes information stored on magnetic media, CDs, in written form of any kind or accessible via an FTP server.

"**Directory**" is the published list of Contractors made available on the Libraries Australia web site at <http://www.nla.gov.au/librariesaustralia/training/directory.html>.

"**GST**" has the meaning given by the GST Law, and includes any additional tax, penalty tax, fine, interest or other charge.

"**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999*.

"**GST Law**" means the same as in the GST Act.

"**Intellectual Property**" includes business names, copyrights, and all rights in relation to inventions, patents, registered and unregistered trade marks (including service marks), registered designs, and semi-conductor and circuit layouts, and know-how, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

"**Libraries Australia**" means the internet-based service so named and made available by the NLA to Australian libraries and other users.

"**Libraries Australia Cataloguing Client**" means the run time copy of the OCLC EMEA Windows Intelligent Bibliographic Workstation (WinIBW) software provided by the NLA to the Contractor for online cataloguing.

"**Material**" includes documents, equipment, software, goods, information and data stored by any means.

"**Moral Rights**" means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that exist, or may come to exist, in the Contract Material.

"**NLA**" means the National Library of Australia.

"**Normal Working Days**" means all days except Saturdays, Sundays and days declared as Public Holidays in the Australian Capital Territory.

"**OCLC EMEA**" means the Europe, Middle East and Asia office of the Online Computer Library Center (based in Dublin Ohio).

"**Party**" means the Contractor or the NLA, as the context requires.

"**Personal Information**" means information or opinion (including information or opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent or can reasonably be ascertained from the information or opinion.

"**Project Officer**" means the person for the time being holding or performing the duties of the Manager, Libraries Australia Customer Services, National Library of Australia, and includes an officer of the NLA who is authorised by the said person to perform any of the functions of the Project Officer.

"**Specified Personnel**" mean personnel of the Contractor who are authorised in writing by the NLA to conduct Training Courses on behalf of the Contractor under **clause 5**.

"**Tax Invoice**" means a tax invoice complying with the requirements of the GST Law.

"**Taxable Supply**" means the same as in the GST Law.

"**Term of the Contract**" means the period referred to in **clause 2**.

"**Training Courses**" means courses on the use of Libraries Australia to be conducted by the Contractor in accordance with the Contract and listed in **Schedule 1**.

"**Training Services**" means the Training Services, or any part of the Training Services, specified in **Schedule 1** and includes the preparation and delivery of Contract Material.

"**Travel Allowance**" means travel expenses which may be payable to the Contractor by the NLA in accordance with **clause 14** and **Schedule 2**.

1.2 Rules for interpreting this Contract

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting the Contract, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

- (iii) a party to this Contract or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) a professional or industry standard is determined by reference to the best practice in the relevant field or area of expertise; and
 - (vi) any thing (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word is defined, another part of speech has a corresponding meaning.
 - (e) If an example is given of any thing (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (g) The words "**subsidiary**", "**holding company**" and "**related body corporate**" have the same meanings as in the Corporations Law.
 - (h) All references to dollars are to Australian dollars and the Contract uses Australian currency.
- 1.3 In the event of inconsistency between the clauses of the Contract and the contents of the Schedules, the clauses of the Contract will prevail to the extent of the inconsistency.
- 1.4 In the event of a conflict between the Contract and any professional or industry standards or practices applicable to the Training Services, the terms of the Contract will prevail.

PART 2 - TRAINING SERVICES

2. PERIOD OF THE CONTRACT

- 2.1 The Contract will commence on the Commencement Date and, unless terminated earlier, will remain in force until 30 June in the following calendar year.
- 2.2 The period of the Contract referred to in **clause 2.1** will renew automatically unless terminated or unless one Party gives the other Party 20 Normal Working Days' prior written notice that the Party does not wish the Contract to be renewed.
- 2.3 The Contract does not oblige the NLA to enter into any further contract with the Contractor.

3. THE NLA'S ACCESS TO THIRD PARTIES

- 3.1 Nothing in the Contract prevents the NLA from having access to, or contact with, other goods and services suppliers including other persons to perform training services similar to the Training Services.

4. SCOPE OF THE CONTRACT

- 4.1 The Contractor is permitted and required, under the terms of the Contract, to perform the Training Services specified in **Schedule 1**.
- 4.2 Unless otherwise specified in **Schedule 1**, the Training Services include the provision of further information, including by written response, in answer to questions raised by the NLA on the Training Services.
- 4.3 Except as specified in the Contract, the Contractor must provide at no additional cost or charge to the NLA, all facilities, personnel, materials and assistance necessary for the proper performance of the Training Services.
- 4.4 If incidental Training Services or functions are required for the proper performance of the Training Services, they will be taken to be included in the scope of the Training Services.

5. SPECIFIED PERSONNEL

- 5.1 Training Courses must be run by Specified Personnel. The Contractor must:
- (a) not use any personnel other than Specified Personnel to run Training Courses; and
 - (b) ensure, subject to the authorisation requirements in this **clause 5**, that Specified Personnel are at all times available to provide the Training Courses.
- 5.2 Within 10 Normal Working Days of the Commencement Date, the Contractor must nominate and provide in writing, a list of persons who it proposes to use to run Training Courses. On receipt by the NLA, this will for purposes of **clause 33**, become Schedule 3 of the Contract
- 5.3 The Contractor must either:
- (a) provide a training competency statement in respect of a person nominated by the Contractor, setting out the following information in respect of that person:
 - (i) training qualifications;
 - (ii) formal training experience;
 - (iii) currency of training experience;
 - (iv) knowledge of difference learning styles; and
 - (v) such other information requested by the NLA from time to time; or
 - (b) request that the person nominated by the Contractor under **clause 5.2** be assessed by an authorised assessor appointed by the NLA.

- 5.4 The NLA may, in its absolute discretion, waive the requirements of **clause 5.3** in respect of a person nominated by the Contractor who, prior to the Commencement Date, provided training services similar to the Training Services to the satisfaction of the NLA. Amongst other things, the NLA will base its decision of whether the person had provided Training Services satisfactorily on:
- (a) whether the person conducted regular Training Courses for the NLA; and
 - (b) whether the person submitted quarterly returns and evaluation forms to the NLA.
- 5.5 The Contractor must, if requested by the NLA, provide to the NLA such information as the NLA reasonably requires for the purpose of allowing the NLA to undertake reasonable investigations (including security checks and investigations as to competency to perform the Training Services) of persons nominated by the Contractor under **clause 5.2** for the purposes of this clause.
- 5.6 The NLA must not unreasonably withhold authorisation of a person and must notify the Contractor in writing of:
- (a) the names of the persons it authorises to conduct Training Courses subject to the Contract ("**Specified Personnel**"); and
 - (b) the names of the persons it refuses to authorise to carry out such work or perform such duties.
- 5.7 The Contractor must advise the NLA promptly in writing of any change in the circumstances of Specified Personnel that, in the Contractor's reasonable opinion, is likely to affect the NLA's assessment.
- 5.8 The NLA may at any time, on reasonable grounds, but without incurring any liability whatsoever, withdraw, limit or suspend its authorisation in respect of a Specified Person and will so notify the Contractor.
- 5.9 If a Specified Person is unable to perform Training Services, the Contractor must promptly notify the NLA in writing. The Contractor must use best endeavours to ensure that the Specified Person is available to train any replacement approved by the NLA in accordance with **clause 5.10** if required by the NLA to do so.
- 5.10 If:
- (a) the NLA withdraws, limits or suspends its authorisation of a Specified Person under **clause 5.8**; or
 - (b) a Specified Person is unable to perform the Training Services for the purposes of **clause 5.9**,

the Contractor may propose in writing to the NLA, a person to replace the Specified Person. Any such replacement must be approved by the NLA in accordance with this **clause 5** before the replacement will be considered a "Specified Person" for the purposes of the Contract.

6. TRAINING OF SPECIFIED PERSONNEL

- 6.1 All Specified Personnel must complete the training required of them by the NLA as set out in **Schedule 1** prior to conducting a Training Course.

PART 3 - ADMINISTRATION

7. PROJECT OFFICER

- 7.1 The Contractor must liaise with and report to the Project Officer as reasonably required by the Project Officer during the Term of the Contract.
- 7.2 The Contractor must comply with any reasonable direction given by the Project Officer, on behalf of the NLA, within the general scope of administration of the Contract, including in relation to the provision of reports.
- 7.3 The Contractor must provide the reports required in **Schedule 1** at the times specified in **Schedule 1**.
- 7.4 The Contractor must nominate a person who has authority to receive and sign notices and written communications for the Contractor under the Contract and accept any request or direction in relation to the Training Services. That person must be identified in **clause 38**.

8. STANDARDS OF PERFORMANCE

- 8.1 The Training Services must be performed in accordance with the Contract:
- (a) to a standard that represents best industry practice or a high professional standard, whichever is the higher standard, for equivalent Training Services;
 - (b) to ensure that the NLA is fully and accurately informed on all matters which are the subject of the Training Services;
 - (c) to comply with all legal including statutory and regulatory requirements including safety standards; and
 - (d) to ensure all obligations including deadlines specified in the Contract are fully satisfied.
- 8.2 Where the Training Services include the provision of reports or the production of other documents, the Contractor must ensure that all reports or other documents contain all information requested by the NLA and are accurate and not misleading in any respect.
- 8.3 All advice provided orally or in writing must be fit for purpose and answer all issues and questions specified in or relevant to, the delivery of the Training Services.

9. PERFORMANCE EVALUATION AND REVIEWS

- 9.1 Without reducing the Contractor's responsibility to perform its obligations in accordance with the Contract, the Project Officer may monitor and review the Contractor's performance throughout the Term of the Contract. Performance indicators include:
- (a) quality, timeliness and reliability of the Training Services provided;
 - (b) the level of compliance with the Contract;
 - (c) skills exhibited by Specified Personnel in accordance with the Contract; and
 - (d) timeliness and accuracy of reports.
- 9.2 The Contractor must measure (and report to the NLA on) its performance of all Training Courses that it conducts.
- 9.3 Where not available electronically, the Contractor must give evaluation forms provided by the NLA to each of the attendees at its courses and must use its best efforts to ensure the attendees complete the evaluation forms and return the completed forms to the Contractor. The Contractor must provide copies of all completed and unaltered evaluation forms to the NLA at the time specified in **Schedule 1**.

10. AUDIT

- 10.1 The NLA, or any person authorised by the NLA in writing, may conduct an audit of the performance of the Contract at any time.
- 10.2 The Contractor must participate in audits of the Contract at the frequency and in relation to the matters specified by the NLA, including on an ad hoc basis if requested by the NLA, for the purpose of ensuring that the Contract is being properly performed and administered. The NLA may appoint an independent person to assist in the audits.

11. ACCOUNTS AND RECORDS

- 11.1 The Contractor must at all times maintain proper accounts in relation to the Training Services and claims for Travel Allowance. Such accounts must:
- (a) be complete and be maintained up-to-date;
 - (b) be kept in a manner that permits them to be conveniently and properly audited; and
 - (c) enable the extraction of all information relevant to the Contract.

12. ACCESS TO CONTRACTOR'S PREMISES AND RECORDS

- 12.1 The Contractor must grant at all reasonable times:
- (a) the NLA or any persons authorised in writing by the NLA;
 - (b) the NLA's auditors; and

- (c) the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner or their delegates for the purposes of performing their respective statutory functions,

access to the Contractor's premises, records, accounts and other financial material or material relevant to the Contract, including Contract Material, however and wherever stored or located, in the custody, possession or control of the Contractor or Contractor Personnel, for inspection and/or copying.

- 12.2 In the case of documents or records other than in hard copy form, the Contractor must make available on request such reasonable facilities as may be necessary to enable the NLA to obtain a legible reproduction at no additional cost to the NLA.
- 12.3 This **clause 12** applies for the Term and for a period of 7 years from the date of the expiration or termination of the Contract.
- 12.4 Nothing in the Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner or any of their delegates. The rights of the NLA under the Contract are in addition to any other power, right or entitlement of the Commonwealth Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner or their delegates.
- 12.5 In no circumstances will the Contractor be entitled to any delay costs or other costs or expenses of whatever nature relating in any way to the exercise of any rights under this **clause 12**.

PART 4 - PAYMENT

13. CONSIDERATION

- 13.1 The consideration for performance of the NLA's obligations under this Contract is that Libraries Australia will be promoted and users of Libraries Australia will be better trained and informed in relation to the use of Libraries Australia by virtue of those users having attended Training Courses provided by the Contractor. For avoidance of doubt, the NLA is not responsible for payment of fees by attendees of Training Courses.
- 13.2 The consideration for performance of the Contractor's obligations under this Contract is the ability for the Contractor to conduct training courses and to determine the amount of and charge fees to attendees of Training Courses conducted by the Contractor.
- 13.3 The Contractor's entitlement to payment from the NLA for the performance of the Training Services under this Contract is limited to payment of Travel Allowance, if applicable, on the terms and conditions set out in **clause 14** and **Schedule 1**.

14. TRAVEL ALLOWANCE

- 14.1 In accordance with **Schedule 2**, the Parties may agree in respect of particular Training Courses that the NLA will pay Travel Allowance to the Contractor.
- 14.2 All payments of Travel Allowance are inclusive of GST but must not include any input tax credit the Contractor is entitled to.

14.3 The Contractor must submit invoices for payment of Travel Allowance in the manner specified in **Schedule 2**.

15. GOVERNMENT TAXES, LEVIES AND CHARGES

15.1 If a payment by the Contractor to satisfy a claim by the NLA under or in connection with the Contract (for example, under an indemnity given by the Contractor or for a breach of any representation or warranty by the Contractor) gives rise to a liability to pay any goods and services tax or like government tax, duty or charge ("**GST**") in respect of a taxable supply by the NLA, the Contractor must pay the amount of that GST to the NLA within 14 Normal Working Days of a request to do so.

15.2 The amount recoverable by the NLA in respect of any indemnity, representation or warranty given by the Contractor under the Contract includes the amount of GST payable on the cost or expense in relation to which the indemnity, representation or warranty is paid, but will exclude the amount of any input tax credit or other credit to which the NLA, as the taxable supplier, is entitled in respect of the cost or expense recovered.

PART 5 - INTELLECTUAL PROPERTY

16. COURSE DOCUMENTATION

16.1 The Contractor acknowledges the NLA's ownership or control by licence of the Intellectual Property Rights in Training Course handouts and materials (the "**Course Documentation**").

16.2 The Contractor may purchase hard copies of Course Documentation at a 10% discount off the ordinary retail price provided that a minimum of 10 copies of the Course Documentation are ordered. The Contractor acknowledges that Course Documentation may take from 10 Normal Working Days to 15 Normal Working Days to be prepared and to be provided to the Contractor. Alternatively, the Contractor may download Course Documentation from the Libraries Australia website (www.nla.gov.au/librariesaustralia) without charge and may copy this material only for the purposes of the Contract.

16.3 The Contractor may amend Course Documentation provided that the Contractor obtains the NLA's written consent to the amended Course Documentation prior to its use in Training Courses. All Intellectual Property Rights in any amendments made to Course Documentation will as Contract Material, vest in the NLA on their creation. For the avoidance of doubt, amendments made to Course Documentation will not affect the ownership or control by licence of the Intellectual Property Rights in the original Course Documentation under **clause 16.1**.

16.4 The Contractor, to the extent permitted by law, consents and must ensure that Specified Personnel consent (including as required by the NLA in the form of **Schedule 4**) to any act or mission that would otherwise infringe any Moral Rights in the Contract Material, as outlined in **clause 19.1**.

16.5 If requested by the NLA so to do, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary to give effect to this **clause 16**.

17. LICENCES

17.1 Where required, the NLA must provide to the Contractor:

- (a) one copy of the Libraries Australia Cataloguing Client referred to in **clause 17.2**; and
- (b) access to the Services referred to in **clause 17.4**.

17.2 The NLA, as agent for OCLC EMEA grants a non-exclusive, non-transferable, royalty-free licence to the Contractor for the Term of the Contract to use one copy of the Libraries Australia Cataloguing Client provided that the Libraries Australia Cataloguing Client is used only:

- (a) for the purposes of the Training Services; and
- (b) in a manner that complies with any other conditions notified in writing by the Project Officer.

17.3 Despite **clause 36.1**, the NLA reserves the right to, if reasonably requested by OCLC EMEA and by notice in writing to the Contractor, unilaterally vary the terms of the licence for the Libraries Australia Cataloguing Client granted under this **clause 17**.

17.4 The NLA grants a non-exclusive, non-transferable, royalty-free licence to the Contractor - for the Term of the Contract to use the training versions of the following services (which include software):

- (a) Libraries Australia Search; and
- (b) Libraries Australia Document Delivery,

(referred to in this **clause 17** as "**the Services**"), for the purposes of the Contract only, including allowing access by trainees. The Contractor is not authorised to use the Services for research or any other purposes (except as permitted by this clause), and the NLA reserves the right to audit compliance with this clause.

17.5 The Contractor must not:

- (a) copy, sell or distribute the Libraries Australia Cataloguing Client or the Services, in whole or in part; or
- (b) allow non-authorised persons to access the Libraries Australia Cataloguing Client or the Services.

17.6 The Contractor must not:

- (a) license, sell, transfer, use, copy or reproduce the Libraries Australia Cataloguing Client or the Services other than in accordance with **clauses 17.2** and **17.3**; or
- (b) de-compile or de-assemble the Libraries Australia Cataloguing Client or the Services in whole or in part

- 17.7 All Intellectual Property rights in:
- (a) the Libraries Australia Cataloguing Client, including any enhancements, modifications and changes such as may be supplied are reserved to OCLC EMEA or third parties; and
 - (b) the Services
- are reserved to the NLA.
- 17.8 The Contractor may, for the purposes of conducting a Training Course, request an extension of the licence in **clause 17.2** for up to 12 copies of the Libraries Australia Cataloguing Client. Such requests must be made at least two (2) months in advance of the relevant Training Course. The NLA may, in its absolute discretion, provide such extension as agent for OCLC EMEA. If such extension is granted, all copies of the Libraries Australia Cataloguing Client provided under that extension must be used only for the purposes permitted in **clause 17.2**. Within 20 Normal Working Days of completion of any Training Course for which an extended licence was granted, the Contractor must destroy the original and any other copies, translations, compilations and merged copies of the Libraries Australia Cataloguing Client that was/were installed or used under the extended licence in order to withdraw all parts of the Libraries Australia Cataloguing Client from all machines on which it was installed or used.
- 17.9 The Contractor acknowledges that:
- (a) the NLA and OCLC EMEA do not guarantee or represent that any Libraries Australia Cataloguing Client will be delivered to the Contractor on any particular date or that it will be error free; and
 - (b) the NLA does not guarantee that the Services will be error free.
- 17.10 Within one month following the termination of the Contract, the Contractor must:
- (a) destroy the original and any other copies, translations, compilations and merged copies of the Libraries Australia Cataloguing Client that was/were provided to it by the NLA under this **clause 17** in order to withdraw all parts of the Libraries Australia Cataloguing Client from all machines on which it was installed or used; and
 - (b) cease access to the Services.
18. **CONTRACTOR MATERIAL**
- 18.1 Ownership of and all Intellectual Property rights in or in relation to all Training Course materials which are developed by the Contractor for the purpose of conducting a Training Course will remain vested in the Contractor except to the extent they include Course Documentation.
- 18.2 Before using any materials referred to in **clause 18.1**, the Contractor must:
- (a) provide a copy of those materials to the NLA; and

- (b) incorporate all amendments suggested by the NLA and give a copy of the amended materials to the NLA.
- 18.3 The Contractor grants to the NLA a permanent, irrevocable, royalty-free, non-exclusive licence to use, reproduce, adapt and exploit the materials provided by the Contractor under **clause 18.2** anywhere in the world – including providing those materials to other service providers providing training services similar to the Training Services for the NLA. Despite Part VII of the *Copyright Act 1968*, publication of the material in accordance with this licence will not affect such ownership.
- 18.4 If requested by the NLA so to do, the Contractor must bring into existence, sign, execute or otherwise deal with any additional document which may be necessary to give effect to this **clause 18**.
- 18.5 The Contractor warrants that anything done by the Contractor in the course of providing the Training Services, including the development or creation of the materials referred to in this **clause 18**, will not infringe the Intellectual Property rights of any person.
- 18.6 The Contractor must at all times indemnify the NLA, its officers, employees and agents ("**those indemnified**") from and against any loss (including legal costs and expenses on a solicitor and own client basis) or liability whatsoever incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceedings by any person against any of those indemnified in respect of any infringement of Intellectual Property rights by the Contractor, its officers, employees, agents or subcontractors in carrying out the Training Services.
- 18.7 The indemnity referred to in this **clause 18.6** will survive the expiration or termination of the Contract.

19. MORAL RIGHTS

- 19.1 To the extent permitted by law, if the Contractor is the owner of the Moral Rights in the material referred to in **clause 18.1** (including any amendments to Course Documentation under **clause 16**), the Contractor unconditionally and irrevocably:
 - (a) consents to any act or omission that would otherwise infringe its Moral Rights in that material, including any act or omission that may have taken place before this consent and in particular consents to the following acts:
 - (i) any alteration to or deletion from that material;
 - (ii) any use of that material that does not identify the Contractor; and
 - (iii) any use of that material that may falsely attribute authorship of that material to any other person; and
 - (b) waives all of its Moral Rights in that material,

for the benefit of the NLA, its licensees, successors in title and anyone authorised by any of them to do acts permitted under the terms of the Contract.

PART 6 - RELEVANT REQUIREMENTS

20. DISCLOSURE AND USE OF INFORMATION

20.1 No disclosure by Contractor

Subject to this **clause 20**, the Contractor must not disclose or make public any NLA Confidential Information without the prior approval in writing of the NLA. In giving written approval, the NLA may impose such terms and conditions as in the NLA's opinion are appropriate.

20.2 No disclosure by personnel

- (a) The Contractor must take all reasonable steps to ensure Specified Personnel engaged in the provision of the Services do not make public or disclose the NLA Confidential Information.
- (b) The Contractor must ensure that NLA Confidential Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse and must, if requested by the NLA, ensure that only Specified Personnel who have executed a Deed of Confidentiality in the form of **Schedule 4** have access to the NLA Confidential Information.

20.3 Permitted disclosure by the Contractor

The Contractor may disclose the NLA Confidential Information:

- (a) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Contractor; or
- (b) if required in connection with legal proceedings;

but in each case, subject to the Contractor giving the NLA sufficient notice of any proposed disclosure to enable the NLA to seek a protective order or other remedy to prevent the disclosure.

20.4 Disclosure to legal advisers

Either party may disclose the other party's confidential information to its legal advisers in order to obtain advice in relation to its rights under the Contract, but only to the extent necessary for that purpose.

20.5 Internet disclosure

The Contractor must not disclose the NLA Confidential Information on the internet for any purpose without the prior written consent of the Project Officer or as expressly permitted in the Contract.

20.6 Transfer outside Australia

The Contractor must not transfer NLA Confidential Information outside Australia, or allow persons outside Australia to have access to it, without the prior approval of the NLA.

20.7 Use of Confidential Information

The Contractor must use NLA Confidential Information held, acquired or which the Contractor may have had access to in connection with the Contract only for the purposes of fulfilling its obligations under the Contract.

20.8 Return of Confidential Information

Subject to **clause 20.1**, upon termination or expiration of the Contract, the Contractor must:

- (a) deliver to the NLA (and not retain any copies of) all material forms of NLA Confidential Information; and
- (b) deliver to the NLA a statutory declaration made by an authorised officer of the Contractor declaring that to the best of that person's information and belief (after having made proper inquiries) none of the Contractor or Contractor Personnel have retained any NLA Confidential Information.

20.9 Retention of NLA Confidential Information by Contractor

The Contractor may, for a period of 7 years after the expiry or termination of the Contract, retain one file copy of any NLA Confidential Information that specifically relates to the Parties' communications in relation to the administration of the Contract, so long as any such information retained does not include any Personal Information.

20.10 Term of clause

This **clause 20** will survive expiration or termination of the Contract.

21. **PRIVACY**

21.1 Without limiting any obligations of the Contractor under the *Privacy Act 1988* (**Privacy Act**) or under the Contract, the Contractor acknowledges that it is a Commonwealth service provider under the Privacy Act and must, with respect to all Personal Information that it has access to or collects in or in relation to the performance of the Contract:

- (a) act in a manner so as to comply with the Information Privacy Principles set out in the Privacy Act, as if it were the NLA for the purposes of the Privacy Act;
- (b) not access, use, disclose, publish, communicate or retain, or otherwise deal with in any way, the Personal Information, except in the course of and for the purpose of:
 - (i) performing the Contract;
 - (ii) its obligations under the Privacy Act; or
 - (iii) with the written permission of the NLA;

- (c) implement all reasonable measures to meet the requirements of this **clause 21** and assist the NLA in meeting the NLA's obligations under the Privacy Act;
- (d) co-operate with any reasonable demands or enquiries made by the Privacy Commissioner;
- (e) immediately notify the NLA if it becomes aware that a disclosure of such Personal Information may be required by law, or when the Contractor becomes aware of a breach of any obligation concerning such information;
- (f) ensure that any person who obtains access from the Contractor or the Contractor Personnel to any Personal Information in respect of which the NLA or the Contractor has obligations under the Privacy Act or this **clause 21**, signs a deed in the form set out in **Schedule 4** prior to the access;
- (g) take all reasonable measures to ensure that such Personal Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse, and that only authorised Contractor Personnel have access to it. For the avoidance of doubt, Personal Information must not be used for, or in any way relating to, any direct marketing purpose;
- (h) not transfer such Personal Information outside Australia, or allow parties outside Australia to have access to it, without the prior approval of the NLA and comply with any directions given by the NLA in providing such approval (noting that the NLA is not under any obligation to give approval);
- (i) notify the NLA of, and co-operate with the NLA in the resolution of, any complaint alleging an interference with privacy;
- (j) upon written notice from the NLA, destroy or permanently de-identify any Personal Information as soon as practicable after it is no longer required for the purpose for which it was originally collected;
- (k) indemnify the NLA in respect of any Loss suffered or incurred by the NLA arising out of or in connection with a breach of the obligations of the Contractor under this **clause 21.1**, or any misuse of Personal Information or disclosure in breach of an obligation under the Privacy Act or otherwise, except to the extent that the Loss:
 - (i) is directly caused by a negligent or unlawful act or omission of the NLA or any of its officers or employees; or
 - (ii) arises from the Contractor obeying a specific direction by an authorised representative of the NLA.

21.2 A complaint alleging an interference with the privacy of an individual in relation to Personal Information to which the Contractor has access or has collected in the course of performing the Contract, will be handled by the NLA in accordance with the Privacy Act. The Contractor must provide all reasonable assistance requested by the NLA or the Privacy Commissioner in investigating and addressing the complaint.

- 21.3 Without derogating from any other obligations of the Contractor under statute or otherwise, the Contractor must assist the NLA, if requested to do so, to enable any person, on request, to ascertain in respect of Personal Information:
- (a) whether the Contractor has possession or control of any records that contain such information; and
 - (b) the nature of the information;
 - (c) the main purposes for which the information is used by the Contractor; and
 - (d) the steps that the person should take if the person wishes to obtain access to the information.
- 21.4 The Contractor must, if requested by the NLA to do so, maintain a Personal Information register (**Register**) setting out generally the details referred to in **clause 21.3**, and provide a copy of the Register to the NLA by 31 May of each year that begins during the Term.
- 21.5 The Contractor's obligations in the Contract (including this **clause 21**), are in addition to the Contractor's obligations under the Privacy Act, and prevail to the extent of any inconsistency with the National Privacy Principles or any approved privacy code under the Privacy Act.
- 21.6 Without limiting **clause 21.5**, where the Contractor collects Personal Information about an individual from:
- (a) the NLA; or
 - (b) a person other than the individual or the NLA, at the specific direction of the NLA,
- for the purposes of performing the Contract, the Contractor is not required to take steps to ensure that the individual is or has been made aware of the matters listed in National Privacy Principle 1.3 in the Privacy Act, except as required by the Contract or a specific direction of the NLA.
- 22. ARCHIVES ACT 1983**
- 22.1 The Contractor must not destroy, arrange for, nor effect, a transfer of custody or the ownership of any NLA record without the prior written approval of the NLA and the National Archives of Australia.
- 22.2 Where the NLA and the National Archives of Australia authorise the transfer of custody of NLA records to the Contractor, the Contractor must comply in every respect with the requirements of the *Archives Act 1983* or guidelines issued by the National Archives of Australia.
- 22.3 The Contractor must comply with any direction given by the NLA for the purpose of transferring the NLA records to the National Archives of Australia or providing the National Archives of Australia with full and free access to those records.

23. NEGATION OF EMPLOYMENT PARTNERSHIP AND AGENCY

- 23.1 Any officer, subcontractor, employee, or agent of the Contractor (including Specified Personnel) performing Training Services on behalf of the Contractor under the Contract is and remains at all times an employee, independent contractor or agent of the Contractor.
- 23.2 The Contractor will at all times and at its own expense comply with the provisions of any relevant legislation and make all payments and contributions in respect of statutory obligations including but not limited to income tax, workers' compensation, superannuation, affirmative action, privacy, confidentiality, occupational health and safety, annual leave, long service leave, or any award, order, determination or agreement of a competent industrial tribunal in respect of all Specified Personnel. If requested by the NLA, the Contractor will provide proof to the NLA of compliance with any such legislation, award, order, determination or agreement.
- 23.3 The Contractor must not represent itself, and must ensure that its employees (including Specified Personnel) do not represent themselves, as being employees, partners or agents of the NLA.
- 23.4 The Contractor will not by virtue of the Contract be, or for any purpose be deemed to be, an employee, partner or agent of the NLA.

24. OCCUPATIONAL HEALTH AND SAFETY

- 24.1 Without limiting the Contract, the Contractor must comply at all times with all Commonwealth, State and local government laws and regulations on occupational health and safety.

25. EQUAL OPPORTUNITY FOR WOMEN IN THE WORKPLACE ACT 1999

- 25.1 The Contractor must comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* (the "Act").
- 25.2 The Contractor must not enter into a subcontract under the Contract with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the Act.

26. EMPLOYMENT OPPORTUNITIES FOR ABORIGINALS AND TORRES STRAIT ISLANDERS

- 26.1 The Contractor must use its best endeavours to provide employment opportunities to Aboriginal and Torres Strait Islander people.

PART 7 - INDEMNITY AND INSURANCE

27. INDEMNITY

- 27.1 The Contractor 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 Contractor, or its officers, employees, agents, subcontractors (including Specified Personnel) or invitees in carrying out the Training Services.

- 27.2 The NLA may enforce the indemnity in **clause 27.1** in favour of the persons specified in **clause 27.1** for the benefit of each of such persons in the name of the NLA or of such persons.
- 27.3 The Contractor'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 Contractor), as substantiated by the Contractor.
- 27.4 This indemnity will survive the expiration or termination of the Contract.

28. **INSURANCE**

- 28.1 The Contractor warrants that it is insured for all risks and potential liabilities arising against it out of this Contract including:
- (a) public liability;
 - (b) workers compensation; and
 - (c) professional indemnity.

PART 8 - TERMINATION

29. **TERMINATION WITHOUT DEFAULT**

- 29.1 The NLA may, at any time by written notice, terminate the Contract, in whole or in part. Such termination will take effect on and from the time specified in the notice. If the Contract is so terminated, the NLA is liable only for:
- (a) payment of Travel Allowance in respect of a Training Course which has been conducted but in respect of which no Travel Allowance have already been paid, provided that the Training Course was conducted in accordance with the Contract and the Contractor is not otherwise in breach of the Contract; and
 - (b) subject to this clause, any reasonable costs in respect of unavoidable loss or damage sustained or incurred by the Contractor and directly attributable to the termination or partial termination of the Contract, provided that the costs are fully substantiated to the NLA. These costs must not include loss of potential or prospective profit.
- 29.2 Upon receipt of a notice of termination the Contractor must:
- (a) stop work as specified in the notice (including cancelling any Training Courses which have been organised) and comply with any other directions or requests included in the notice, including any directions or requests relating to Libraries

Australia Cataloguing Client and other resources supplied by the NLA (for example, Course Documentation); and

- (b) take all available steps to minimise or avoid any loss resulting from that termination.

30. DEFAULT

30.1 Without prejudice to its rights at common law, the NLA may, by notice in writing to the Contractor, terminate the Contract immediately in whole or in part if the Contractor:

- (a) does not offer the required number of Training Courses specified under **Schedule 1, Clause 1.8**;
- (b) has no Specified Personnel authorised under the Contract for a continuous period of 1 month and that failure is not a result of an unreasonable delay by the NLA in approving a person nominated by the Contractor under **clause 5**;
- (c) does not comply with any obligation of the Contract, including:
 - (i) failing to report to the NLA in accordance with the Contract; and
 - (ii) conducting Training Courses using persons who are not Specified Personnel or who are Specified Personnel but who have not completed the requisite training to conduct those particular courses; and
 - (iii) failing to comply with its obligations under the Contract as referred to in **Schedule 1**;
- (d) becomes bankrupt or insolvent;
- (e) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;
- (f) goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction, or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise;
- (g) suffers any execution against its assets having adverse effect on its ability to perform the Contract;
- (h) assigns its rights otherwise than in accordance with the requirements of the Contract; or
- (i) suffers a change in Control.

30.2 Subject to **clause 30.3**, if in the NLA's sole and absolute opinion, a breach is capable of being remedied, the NLA will give the Contractor 15 Normal Working Days in which to remedy the breach. If after 15 Normal Working Days the breach is not remedied to the satisfaction of the NLA, then the NLA may terminate this Contract under this **clause 30**.

- 30.3 If the Contractor commits three or more breaches of this Contract, the NLA is not required to give the Contractor 15 Normal Working Days to remedy the breach and may immediately terminate this Contract under this **clause 30**.
- 30.4 Where, before termination of the Contract under the preceding clause, the NLA has made any payment of Travel Allowance in advance to the Contractor, the total amount of that payment must be repaid by the Contractor to the NLA on termination and, if not repaid, is recoverable by the NLA from the Contractor as a debt.
- 30.5 If the Contract is terminated under this clause:
- (a) subject to the Contract, the parties will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
 - (b) the NLA's rights to recover damages are not affected; and
 - (c) the Contractor must comply with all directions or requests included in the notice, including any directions or requests relating to Libraries Australia Cataloguing Client and other resources supplied by the NLA (for example, Course Documentation).

PART 9 - TRANSITION OUT

31. TRANSITION OUT

- 31.1 In the event of termination or expiration of the Contract for any reason, the Contractor must at no additional cost to the NLA, provide whatever reasonable assistance the NLA requests to facilitate transition of the Training Services to the NLA or an alternative contractor. This assistance may include without limitation, the return of Course Documentation and Contract Material.

PART 10 - GENERAL

32. CONFLICT OF INTEREST

- 32.1 For the purposes of this clause, the term "conflict of interest", without limitation, includes any situation which, in the reasonable view of an impartial observer, may hinder or prevent the Contractor from performing the Training Services in the best interests of the NLA.
- 32.2 The Contractor warrants that, at the date of signing the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract.
- 32.3 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Contractor must not engage in any activity, subject to **clause 32.4**, that may result in a conflict of interest arising or continuing.
- 32.4 Where a conflict of interest, a risk of conflict of interest or a perceived conflict of interest arises in the performance of the Contractor's obligations under the Contract, the Contractor must immediately notify the NLA in writing and must follow all reasonable directions from the NLA to resolve or otherwise deal with the conflict. If the Contractor is

unable or unwilling to resolve or deal with the conflict as required, the NLA may terminate the Contract in accordance with **clause 30**.

33. SUBCONTRACTING

33.1 The Contractor must not subcontract the whole, or any part, of the Training Services except:

- (a) with the prior written consent of the Project Officer; and
- (b) on such conditions as the Project Officer in his/her absolute discretion thinks fit.

33.2 The consent of the Project Officer under **clause 33.1(a)** will not relieve the Contractor its obligations under the Contract.

33.3 Despite any consent given by the Project Officer, the Contractor will remain at all times fully responsible for ensuring the suitability of a subcontractor and for ensuring that the Training Services are performed in accordance with the Contract.

34. ASSIGNMENT AND NOVATION

34.1 The Contractor must not assign or otherwise transfer its rights under the Contract without the prior consent in writing of the NLA.

34.2 The Contractor must not consult with any other person or body for the purpose of entering into an agreement which will require novation of the Contract without first consulting the NLA.

34.3 The NLA may assign the Contract to an appropriate party where:

- (a) there is a change in the structure of the NLA, including a division of its functions between two or more Commonwealth agencies or an abolition of some of its functions; or
- (b) because part or all of the Training Services functions of the NLA are to be outsourced to another person.

35. ENTIRE AGREEMENT

35.1 The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of the Contract.

36. WAIVER AND VARIATION

36.1 The provisions of the Contract will not be varied either in law or in equity except by agreement in writing signed by the parties.

36.2 A waiver by a party to the Contract in respect of a breach of a provision of the Contract by the other party will not be deemed to be a waiver in respect of any other breach, and the failure of a party to enforce at any time any of the provisions of the Contract will in no way be interpreted as a waiver of such provision.

36.3 The NLA will not be liable for any additional work undertaken or expenditure incurred by the Contractor pursuant to a variation to the Contract unless such variation has been effected in accordance with the Contract and the additional expenditure has been agreed to by the NLA.

37. LEGAL ADVICE

The Contractor acknowledges that in relation to the Contract, it has received legal advice or has had the opportunity of obtaining legal advice.

38. COSTS AND EXPENSES

Each Party must pay its own expenses incurred in negotiating and preparing the Contract and any related documentation.

39. APPLICABLE LAW

39.1 The Contract will be 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.

39.2 The Contractor must ensure that the work done under the Contract complies with the laws from time to time in force in the State or Territory in which the Training Services, or any part thereof, are to be carried out.

40. NOTICES

40.1 A notice required or permitted to be given by one Party to another under the Contract must be in writing and is treated as being duly given if it is:

- (a) left at that other Party's address;
- (b) sent by pre-paid mail to that other Party's address; or
- (c) transmitted by facsimile to that other Party's address.

40.2 A notice given to a Party in accordance with **clause 40.1** will be treated as having been duly given and received:

- (a) when delivered (if left at that Party's address);
- (b) on the third Normal Working Day after posting (if sent by pre-paid mail); or
- (c) on the Normal Working Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

40.3 For the purposes of this **clause 40**, the address of a Party is the address set out below or another address of which that Party may from time to time give notice to each other Party:

National Library of Australia:

To: National Library of Australia, Collaborative Services Branch

Attention: Manager, Libraries Australia Customer Services

Address: Parkes Place
Canberra, ACT 2600

Facsimile: (02) 6273 1180

The Contractor:

To:

Attention:

Address:

Facsimile:

41. WARRANTY

41.1 The Contractor warrants that it has full corporate power and authority to enter into, perform and observe its obligations under the Contract and that the execution, delivery and performance of the Contract has been duly and validly authorised by all necessary corporate action.

42. COUNTERPARTS

42.1 The Contract may be executed in counterparts by the Parties, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement, provided that the Contract will be of no force and effect until the Commencement Date.

SCHEDULE 1 - TRAINING SERVICES

1. TRAINING SERVICES

Overview

- 1.1 The Contractor must provide, on a non-exclusive basis, Training Courses on the terms and conditions set out in the Contract. The Training Courses which may (subject to the Contract) be provided by the Contractor are:
- (a) Libraries Australia Search;
 - (b) Libraries Australia Cataloguing Client;
 - (c) Libraries Australia Document Delivery; and
 - (d) Libraries Australia Administration.
- 1.2 The Contractor must ensure that the Training Courses are provided:
- (a) to Libraries Australia customers or potential customers only; and
 - (b) in enough detail for attendees to have a clear understanding of the functionality of the Libraries Australia services referred to in **clause 1.1**.
- For the purpose of **clause 1.2(a)**, library schools and library school students are not potential Libraries Australia customers. Training Services must not be provided to these organisations/people as the NLA has a separate training arrangement for these trainees. Any requests for training by library schools or library school students must be referred to the NLA.
- 1.3 Except as otherwise specified in this **Schedule 1** (in particular **paragraphs 1.5** and **1.15** of this **Schedule 1**), the Contractor is responsible for arranging all Training Courses at no cost or charge to the NLA.
- 1.4 The Contractor may provide courses to Libraries Australia customers:
- (a) located within a geographic area specified in the Directory;
 - (b) located in another geographic area, after conferring and reaching agreement with any Training Course contractors that have been designated within the Directory for that geographic area. If for any specific Training Course, agreement cannot be reached, the NLA will determine on request and at its sole and absolute discretion, the arrangements for the Training Course, with the aim of best meeting the needs of Libraries Australia customers; and
 - (c) if the Contractor is an organisation or consortium which has individuals or institutions as its members, to any of its members or subscribers, wherever they are located.
- 1.5 On occasion, the NLA may invite the Contractor to provide a Training Course in a geographic area or other particular area in which there is a need as determined by the

NLA for Training Courses. If the Contractor is willing to accept the NLA's offer, the NLA and the Contractor will negotiate in good faith the terms and conditions for the performance of the Training Course including the payment of Travel Allowance. The Contractor acknowledges that the NLA:

- (a) is not bound to invite the Contractor to provide such Training Courses; and
- (b) may, at any time prior to the Parties agreeing on the terms and conditions on which the Training Courses are to be performed, withdraw its invitation at no cost to the NLA.

1.6 The Contractor must, if required by the NLA, and as part of Training Courses, promote other services related to Libraries Australia provided by the NLA. The NLA must provide the Contractor with all the necessary information in order for the Contractor to promote the services.

1.7 The Contractor must meet its reporting obligations under this **Schedule 1**.

Training Courses

1.8 The Contractor must ensure that its Specified Personnel offer a minimum of one Training Course during the first six months and one in every six month period thereafter, dependent on the Term of the Contract, unless the Contractor gives the NLA a reason for this failure which is, in the NLA's absolute discretion, acceptable to the NLA .

1.9 The Contractor must give the NLA 20 Normal Working Days prior notice of all Training Courses, excluding Training Courses delivered online. On request by the Contractor, the NLA must advertise details on the Libraries Australia discussion list for each Training Course of which the NLA is notified.

1.10 New online Training Courses must be notified to the NLA when initiated, and reporting obligations in this **Schedule1** must be met.

1.11 Subject to **clause 17**, the NLA must provide to the Contractor, a user ID and associated password to the Libraries Australia system for online instruction during Training Courses, as well as for Training Course preparation purposes.

1.12 The Contractor must ensure that:

- (a) each Training Course conducted by the Contractor is conducted in accordance with:
 - (i) this Contract; and
 - (ii) any other requirements, written instructions or directions given by the NLA to the Contractor from time to time; and
- (b) the Contractor provides Course Documentation to each of the attendees at the Training Courses.

1.13 All Training Courses must be performed with at least the following facilities provided by the Contractor:

- (a) at least one personal computer must be provided for every two trainees;
 - (b) tables big enough for the trainees to place their learning materials must be provided to all trainees;
 - (c) tables must be positioned so that all trainees can easily view the personal computer allocated to them and all whiteboards and other visual aids;
 - (d) where projected images are used (eg., overheads/power-point presentations) the training room must be set up according to the “two-by-two rule” – namely:
 - (i) the distance from the screen to the first row of seats should equal twice the width of the screen;
 - (ii) the distance from the screen to the last row of seats should equal six times the width of the screen; and
 - (iii) the projected image should fill the screen completely.
- 1.14 The NLA acknowledges that the Contractor shall not be obliged to pay any fees or charges to the NLA for use of the Libraries Australia training system during Training Courses provided that the Contractor complies with its obligations under the Contract (including, without limitation, the requirement to notify the NLA of all Training Courses to be conducted under **paragraph 1.9** of this **Schedule 1**).
- 1.15 The Contractor may set its own charges/fees to be paid by trainees at Training Courses. Such charges must be fair and reasonable given the nature of the Training Services to be provided. The NLA can be charged for the provision of the Training Courses to NLA employees.
- 1.16 Without limiting the NLA’s obligation to pay Travel Allowances under **clause 14**, all costs associated with organising and running Training Courses are the responsibility of the Contractor.
- 1.17 The NLA will provide the Training Course curriculum to be followed by the Contractor when conducting Training Courses. The Training Course curriculum will include a series of objectives that relate to stipulated learning outcomes.
- 1.18 Training Courses to be conducted by the Contractor will be practical courses, developed according to discrete units of content (or modules) to form a structured training program or course.
- 1.19 The curriculum will include a variety of presentation and teaching methods - selected to cater for:
- (a) training outcomes;
 - (b) different learning styles; and
 - (c) the availability of equipment and resources.

- 1.20 The NLA will stipulate as required how closely the Contractor must follow the curriculum and which, if any, modules are to be considered as optional.
- 1.21 The modules will be sequenced and integrated in such a way that trainees will be able to understand the relationship between the individual skills and the task as a whole.
- 1.22 Where possible all handouts for online courses will be designed so that they are suitable for self-managed learning in the workplace after the course has been completed.

Meetings

- 1.23 The Contractor must to the best of its endeavours, send at least one Specified Personnel to the Libraries Australia annual meeting and the Training Services' provider meeting normally held in conjunction with this meeting.
- 1.24 The Contractor must to the best of its endeavours, send at least one Specified Personnel to each Libraries Australia user group meeting held in each state and territory in which the Contractor performs Training Courses. The Contractor must promptly refer to the NLA any operational questions which are raised in a user group meeting which the Specified Personnel was/were unable to answer.

Reports

- 1.25 Following the completion of each Training Course, the Contractor must provide a written report on the Training Course to the Project Officer. The report should include information such as:
- (a) frequently asked questions in the Training Course; and
 - (b) suggestions for further development of Libraries Australia.
- 1.26 The Contractor must provide to the NLA, quarterly statistics of:
- (a) the number and type of Training Courses conducted; and
 - (b) the number of trainees who attended each course.
- 1.27 Without limiting the Contractor's obligations under **clause 20**, the Contractor must obtain the consent of all trainees who attend a Training Course to the possible disclosure of their name and addresses to the NLA where such Personal Information has been provided.
- 1.28 For the purposes of **clause 9.3**, the Contractor is expected to utilise an NLA online feedback form. Attendees at training courses are required to complete the form at the immediate completion of each Training Course and submit electronically to the NLA. Where not submitted electronically, the Contractor must provide to the NLA all completed evaluation forms provided by attendees at all Training Courses at the same time as the Contractor provides the quarterly statistics referred to in **paragraph 1.26** of this **Schedule 1**.

Conduct

- 1.29 The Contractor must ensure that the Specified Personnel at all times maintain the reputation of Libraries Australia and the NLA.

NLA Assistance

- 1.30 In addition to providing Course Documentation and Libraries Australia Cataloguing Client to the Contractor under **clauses 16 and 17**, the NLA will:
- (a) offer telephone help to all trainees who have attended a Training Course for up to 20 Normal Working Days after the completion of the Training Course; and
 - (b) provide Libraries Australia help desk support to trainees thereafter.
- 1.31 Subject to availability, the NLA will provide access to its training rooms for the Contractor and its trainees, after prior execution by the Contractor of an NLA venue hire agreement.

SCHEDULE 2 - TRAVEL EXPENSES

1. TRAVEL ALLOWANCE

1.1 The Contractor acknowledges that the only fees and charges which the NLA is liable to pay under the Contract for the performance of the Training Services is Travel Allowance in accordance with this **Schedule 2**. Travel Allowance will be calculated on the basis of Commonwealth government rates for non-SES personnel.

1.2 Where:

- (a) the Contractor proposes to run a particular Training Course in circumstances which in the reasonable opinion of the Contractor will incur travel costs; or
- (b) the NLA gives an invitation to the Contractor under **paragraph 1.5 of Schedule 1** the Contractor agrees in principle to providing the Training Course(s) set out in the invitation,

the NLA and the Contractor must enter into good faith negotiations to agree in writing on the Travel Allowance to be paid to the Contractor for the performance of the relevant Training Course(s).

1.3 If the Parties are unable to agree in writing on the Travel Allowance to be paid to the Contractor:

- (a) the Contractor is not entitled to payment of any Travel Allowance in respect of the NLA's invitation under **paragraph 1.5 of Schedule 1**; and
- (b) the Contractor will not be obliged to conduct the proposed Training Course(s) which were the subject of the NLA's invitation under **paragraph 1.5 of Schedule 1**.

1.4 Unless the Parties otherwise agree, the Travel Allowance will be in the form of a lump sum payment inclusive of GST.

1.5 If the Travel Allowance is to be paid in advance of the Training Course(s) being conducted and the Training Course(s) is/are not conducted for any reason, the Contractor must promptly repay the monies to the NLA.

2. INVOICES

2.1 The NLA is not obliged to pay any Travel Allowance to the Contractor until the Contractor issues to the NLA a tax invoice that complies with section 29-70 (1) of the GST Law for all GST charged in respect of the Travel Allowance.

2.2 Invoices forwarded by the Contractor must be correctly addressed to the Manager, Libraries Australia Customer Services, National Library of Australia, Parkes Place, Canberra, ACT 2600 and must contain the following information:

- (a) the information to enable the invoice to be a tax invoice that complies with the GST Law as set out in **paragraph 2.1 of this Schedule 2**;
- (b) name of Project Officer;

- (c) date of the written agreement between the Parties pursuant to **paragraph 1.2** of this **Schedule 2**;
 - (d) date and name of the Contract (including the Contract number (if any));
 - (e) the amount invoiced (separately identifying the amount charged as GST); and
 - (f) details of all Training Services in respect of which the Travel Allowance is to be paid.
- 2.3 If Travel Allowance is to be paid in advance of the Training Course(s) being conducted and the relevant Training Course(s) is/are not conducted for any reason, the Contractor must promptly repay the monies to the NLA.
- 2.4 Subject to the Contract, correctly rendered invoices will be paid within 20 Normal Working Days.

SCHEDULE 3 - SPECIFIED PERSONNEL

Contractor to provide details of 'Specified Personnel' (see Clause 5)

SCHEDULE 4 - DEED OF CONFIDENTIALITY, IP AND MORAL RIGHTS

THIS DEED POLL is made the day of 20[XX]

BY [Insert name and address of employee, agent, subcontractor] (the Recipient)

in favour of

The NATIONAL LIBRARY OF AUSTRALIA (the Library) and [Insert name and ABN of the Contractor] (the Contractor)

RECITALS

- A. The Library requires the provision of Services.
- B. The performance of the Services may require access to information confidential to the Library.

COVENANTS

INTERPRETATION

Contract means the Contract between the Library and the Contractor dated [insert date of Contract] for the provision of the Services.

Moral Rights Material means all Contract Material in which Moral Rights subsist.

Terms not defined in this Deed have the same meaning as in Attachment A of the Contract unless a contrary intention is expressed.

CONFIDENTIAL INFORMATION

The Recipient must not copy, reproduce or disclose any of the Library Confidential Information without the prior written consent of the Library, which consent the Library may grant or withhold in its absolute discretion.

The Library may, at any time and without notice, demand, either orally or in writing, the delivery to the Library of all documents in the possession or control of the Recipient which contain the Library Confidential Information.

RESTRICTION ON USE

The Recipient must:

use the Library Material only for the purposes of the Contract; and

comply with, and work with the Library to ensure compliance with, the provisions of the *Privacy Act 1988* (Cth), including the Information Privacy Principles set out in that Act, in respect of personal information, whether or not it is legally bound to comply with that Act and as if the Recipient were an 'agency' within the definition of that Act. (Details of the Contractor's specific obligations are set out at clause 20 of the Contract).

The Recipient agrees that its obligations under this Deed are in addition to, and do not restrict, any obligations it may have, including under the *Privacy Act 1988* (Cth) or any privacy codes or privacy principles, that would apply to the Contractor but for the application of the other provisions of this Deed.

SECURITY

If requested by the Library, the Recipient must cooperate in any background or national security checks the Library wishes to make of the Recipient (including by providing information usually requested in such circumstances).

ACKNOWLEDGMENT

The Recipient acknowledges that it is aware of all relevant statutory and other obligations and standards of performance applicable to the Services.

INTELLECTUAL PROPERTY

The Recipient:

assigns any Intellectual Property in materials developed or created by the Recipient in the course of performing the Services to the Contractor from the date of creation of those materials; and

to the extent permitted by applicable law, consents, and must ensure its employees and agents consent, to any act or omission that would otherwise infringe any Moral Rights in Moral Rights Material, including any act or omission that may have taken place before or after consent, and in particular consents to the following acts:

any alteration to or deletion from the Moral Rights Material;

any use of the Moral Rights Material that does not identify the author; and

any use of the Moral Rights Material that may falsely attribute authorship of the Moral Rights Material to any other person,

for the benefit of the Library and anyone authorised by it to do acts comprised in the copyright in the Moral Rights Material.

CONFLICT OF INTEREST

The Recipient warrants that no conflict of interest exists or is likely to arise in the performance of the Services.

The Recipient warrants that it will not permit any situation to arise or engage in any activity during the performance of the Services which may result in a conflict of interest.

SURVIVAL OF OBLIGATIONS

The obligations in this Deed are perpetual.

INDEMNITY

Except where the Recipient is a natural person at law, the Recipient indemnifies the Library against any claim, loss, liability or expense incurred by the Library which is caused or contributed to by:

the Recipient's failure to comply with this Deed; or

the act or omission of the Recipient's employees, agents or subcontractors in relation to Library Confidential Information.

SIGNED, SEALED and DELIVERED by the Recipient in the presence of:

Signature of Recipient

Signature of witness

Name

EXECUTED as a contract.

SIGNED by [*name of party*] in the presence of:

Signature of party

Signature of witness

Name

Name

Date

Date