**SCHEDULE 2 – FORM OF OFFER**

This Deed of Undertaking is made the ***2012***

by

|  |
| --- |
| (**Tenderer**)  *(Insert name and ACN/ABN of Tenderer)* |
| in favour of |
|  |
| The NATIONAL LIBRARY OF AUSTRALIA ABN 28 346 858 075 (**The Library**) |

**RECITALS**

1. The Library has issued a Request for Tender (**RFT**) in relation to the provision of Services.
2. The Library requires this Deed of Undertaking to be provided by the Tenderer with the Tender.

**INTERPRETATION**

In this Deed, terms not otherwise defined have the meanings given in the RFT.

**OPERATIVE PROVISIONS**

THE TENDERER UNDERTAKES AS FOLLOWS:

1. The Tenderer offers to provide the Services in accordance with the RFT and on the basis of:

(a) this completed **Schedule 2**; and

(b) the Tender to which this Deed of Undertaking relates.

2. Where the organisation that a Tender proposes the Library enter into a Contract with is a partnership, each person or organisation forming that partnership is jointly and severally liable to the Library for any offer made in the Tender.

**Tender validity period**

3. The Tenderer:

(a) warrants that the information provided by the Tenderer in the Tenderer Schedules is true; and

(b) confirms that its Tender remains valid for acceptance for a period of 6 months after the Tender Closing Time.

***[Tenderers may replace 6 months with a longer period.]***

**Improper assistance and false or misleading information**

4. The Tenderer warrants that the Tender to which this Deed of Undertaking relates has not been prepared with the benefit of:

(a) information obtained from a current or former officer or employee of the Commonwealth of Australia (**Commonwealth**) or the Library in circumstances that constitute a breach of confidentiality or fidelity on the part of that person or a breach of sections 70 or 79 of the *Crimes Act 1914* (Cth) or the Public Service Regulations; or

(b) information otherwise improperly obtained from the Library or any department or agency of the Commonwealth.

5. The Tenderer acknowledges that:

(a) the Library will be relying on all of the information contained in and all of the representations made in its Tender and any subsequent written and/or verbal clarifications of the Tender for the purposes of evaluating the Tender against Tenders received from other persons; and

(b) it is a serious offence under Division 137 of the *Criminal Code Act 1995* (Cth) to give false and misleading information to the Commonwealth and its officers.

6. The Tenderer warrants that the Tenderer, and to the best of the Tenderer's knowledge after all reasonable enquiries, any Subcontractors ***[and [name any consortium members]]***, through its or their officers, employees or agents, ***[has/have]*** not attempted and will not attempt to influence improperly or obtain any special advantage from any officer, employee or contractor, or ex-officer, ex-employee or ex-contractor of the Commonwealth or Library in connection with the preparation of or assessment of any Tender.

**Equal opportunity for women**

7. Neither the Tenderer, nor any party proposed by the Tenderer to deliver any Services to the Library, has been named as non compliant under the *Equal Opportunity for Women in the Workplace Act* *1999* (Cth).

**Compliance with the RFT**

8. Subject to the Tenderer's response to **Schedule 3.7** of the RFT (Tenderer's Compliance with Draft Contract), the Tenderer warrants that it has read, understands and agrees to all conditions, including without limitation obligations and acknowledgments included in the RFT, under which this Deed of Undertaking is provided.

**Solvency**

9. The Tenderer warrants that:

(a) it and each of its related bodies corporate (as defined in the Corporations Act), principal share and equity holders and any partners are solvent; and

(b) it is not aware of any process to place the Tenderer or any of its related bodies corporate, principal share and equity holders or partners in liquidation, administration or the equivalent.

**Further information in relation to financial and corporate capability**

10. The Tenderer hereby:

(a) consents to and authorises the Library, its officers, employees, agents or advisers to:

(i) undertake any confidential references, probity, credit, security and financial checks as the Library in its sole and absolute discretion requires; and

(ii) seek any financial information required for the purpose of establishing the financial viability of the Tenderer;

(b) undertakes to provide at the Tenderer's expense reasonable assistance to the Library, its officers, employees, agents or advisers to assist it in any checking it wishes to have undertaken under or in respect of its Tender; and

(c) undertakes to obtain the consents and authorisations of any Subcontractor nominated by the Tenderer in the RFT necessary to facilitate the Library, its officers, employees, agents or advisers to:

(i) undertake any confidential references, probity, credit, security and financial checks as the Library in its sole and absolute discretion requires; and

(ii) seek any financial information required for the purpose of establishing the financial viability of the Tenderer; and

(d) undertakes to provide access to and authorisation for the Library to inspect relevant financial records of the Tenderer, as considered necessary by the Library for the assessment of corporate capability.

11. The Tenderer hereby consents to and authorises the Auditor-General or its nominee to access its premises and inspect any documents, records or other information, however stored, in connection with the RFT. The Tenderer will cooperate as reasonably required with any request for access.

12. The Tenderer undertakes to obtain the consents, authorisations and cooperation of any Subcontractor nominated by the Tenderer in its Tender necessary to permit the Auditor-General or its nominee to access the Subcontractor's premises and inspect any documents, records or other information, however stored, in connection with the RFT.

**Conflict of interest**

13. The Tenderer declares the following conflict of interest or potential conflict of interest that may apply to its responding to the RFT or providing the Services involving itself, any member of its consortium or a proposed Subcontractor:

***[Insert details or write "Nil".]***

14. The Tenderer also declares the following circumstances that may give rise to either an actual conflict or a perception of conflict of interest involving itself, any member of its consortium or a proposed Subcontractor:

***[Insert details or write "Nil".]***

15. The Tenderer's proposed method of managing the issues referred to in **paragraphs 13 and 14** and any known or potential conflicts of interest that may arise in the course of providing the Services described in this RFT is:

***[Insert details or write "Not applicable".]***

16. The Tenderer warrants and undertakes that:

(a) at the date of submitting the Tender, no conflict of interest, other than a conflict of interest identified above, exists or is likely to arise concerning itself or a related entity affecting the provision of Services should it be successful with its Tender;

(b) if, before finalisation of the RFT process, a conflict of interest arises concerning itself or a related entity, the Tenderer will notify the Library immediately in writing of that conflict or risk of conflict;

(c) it has the resources, or will be able to obtain the resources, likely to be required to properly provide the Services;

(d) all necessary authorities and approvals have been obtained in order for it to lodge its Tender; and

(e) it will comply with all relevant State/Territory laws and, where applicable or desirable, Commonwealth Occupational Health and Safety Acts or regulations.

**Collusive tendering**

17. The Tenderer has not engaged in any collusive bidding, anti-competitive or any other similar unlawful conduct with any other Tenderer or any other person in relation to the preparation or lodgement of its Tender.

18. Without limiting **paragraph 17**, to the best of its knowledge, the Tenderer has not proposed any Subcontractor for a significant part of the delivery of the Services that is involved in a Tender being lodged in relation to this RFT by any other organisation.

**Acknowledgements**

19. The Tenderer acknowledges that:

(a) the requirements and obligations detailed in Schedule 1 (Statement of Requirement) are based on projected future requirements that may vary significantly from current and historical requirements;

(b) it has conducted its own inquiries, investigations and appraisal of the RFT, including the Services to be provided and any assumptions, uncertainties and contingencies which may have an affect on its Tender;

(c) it has obtained its own advice on the impact of all relevant legislation on its participation in this RFT process;

(d) in lodging its Tender it has not relied on any express or implied statement, warranty or representation, whether oral, written or otherwise made by or on behalf of the Library, its officers, employees, agents or advisers, other than any statement, warranty or representation contained in this RFT;

(e) the Library makes no representation that any other Government Agency will necessarily take up any offer made by the successful tenderer to provide Services to those Government Agencies on the same terms as the Services provided to the Library;

(f) the Library may, in its sole and absolute discretion, at any time exercise any rights it has under the RFT or otherwise; and

(g) the Tenderer is responsible for all costs and expenses related to:

(i) the preparation and lodgement of its Tender;

(ii) any subsequent negotiation; and

(iii) any other action or response in relation to this RFT.

**Judicial decisions in relation to employee entitlements**

20. The Tenderer warrants that neither it nor its proposed Subcontractors have any unpaid claims against them in respect of judicial decisions relating to employee entitlements, other than those for which the Tenderer or Subcontractor has lodged a formal appeal that has not yet been determined.

**Declaration in relation to employment practices**

21. The Tenderer declares the following:

***[Choose one paragraph (a) and delete the other two.]***

(a) The Tenderer has had no adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers’ compensation law in the two years preceding the date this RFT is released.

(a) The Tenderer has had ***[insert number]*** adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers’ compensation law in the two years preceding the date this RFT is released. However, the Tenderer has fully complied or is fully complying with all penalties or orders arising from the court or tribunal decisions.

(a) The Tenderer has had ***[insert number]*** adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers’ compensation law in the two years preceding the date this RFT is released. The Tenderer has not fully complied with, or is currently not fully complying with ***[insert number]*** of the penalties or orders arising from the court or tribunal decisions declared above, because in each case:

(i) the decision is currently under appeal or the period allowed for commencing an appeal has yet to expire; or

(ii) the period allowed for paying the penalty and complying with the order has yet to expire.

(b) The Tenderer understands its obligations under all applicable workplace relations laws, occupational health and safety laws, and workers’ compensation laws. The Tenderer undertakes that it complies with all of these obligations.

(c) The Tenderer agrees that the Library may provide any information collected, or provided to it by the Tenderer during the course of this Tender process (including regarding breaches of the Fair Work Principles) to other Commonwealth agencies or regulatory bodies including the Department of Education, Employment and Workplace Relations, Australian National Audit Office, Fair Work Ombudsman and Fair Work Australia.

(d) If at any time prior to entry into contact with the preferred Tenderer, any information provided in this declaration changes, the Tenderer agrees to advise the Library of that change within 7 days.

**Tenderer's contact details**

Name of Tenderer ***[Tenderer name to be inserted]***

Tenderer's ABN/ACN ***[Tenderer ABN/ACN to be inserted]***

Tenderer's Address ***[Tenderer name to be inserted]***

**Tenderer's Representative:**

Name ***[Representative name to be inserted]***

Telephone ***[Representative's telephone to be inserted]***

Facsimile ***[Representative's facsimile to be inserted]***

Email ***[Representative's email to be inserted]***

**EXECUTED** as a deed poll.

**SIGNED, SEALED** and **DELIVERED** by the

***[Tenderer]*** ABN ***[insert]***

Signature of director Signature of director/secretary

Name Name