
NLA 08/093g

National Library of Australia

Electronic Resources Australia (ERA)

Head Deed

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Date: 6 March 2009

Parties

ProQuest LLC ABN 27127866951 (**Contractor**)

National Library of Australia ABN 28346858075 (**NLA**)

Background

The NLA requires the establishment of a panel of suppliers of specified Full-text electronic resources (Products).

This Head Deed records the parties' agreement about the Contractor's participation in the panel, by establishing the contracting framework under which the Contractor will provide Deliverables to a Participant, including the Standard Contract Terms applicable to each Contract.

This Head Deed sets out:

- the Contractor's Product List of Products available for provision to each Participant; and
- how each Contract between the Contractor and a Participant for Deliverables will be formed.

The Contractor has fully informed itself on all aspects of this Head Deed and requirements under it.

Agreed terms

1 Interpretation – this Head Deed

1.1 Definitions – this Head Deed

In this Head Deed, unless the contrary intention appears:

Application Programming Interface means a set of functions, procedures, methods or classes that a computer operating system, library or service provides to support requests made by computer programs.

Australian National Bibliographic Database means the national database of materials held in Australian libraries, which is maintained by the NLA.

Available means a Deliverable or Product can be used by the Customer and its Authorised Users in accordance with its Specifications. **Availability** has the same meaning.

Commencement Date means the date stated at the beginning of this Head Deed, being the date this Head Deed is entered into by the Contractor and NLA.

Contract means a contract between a Participant and the Contractor formed pursuant to clause 3.

Deliverable, in relation to this Head Deed, means a Product listed in the Product List or another product or service specified in a Purchase Order.

Electronic Resources Australia means a consortium which aims to improve access to Full-text electronic resources as a public benefit for Library users.

Executive Officer means a member of NLA staff assigned to manage the operations of the Electronic Resources Australia.

Full-text means an electronic record in a Product or Deliverable that includes all of the text from the original publication that the record represents and where possible includes, images, graphics and other representations.

Head Deed means this head deed NLA 06/044 between the Contractor and NLA.

Interlibrary Loan and Document Delivery means the activities undertaken by a Library in lending or copying from its collection for supply to another Library. These copies are supplied under the exemptions in the *Australian Copyright Act, 1968* as well as the provisions of the Digital Agenda and the USA/Australia Free Trade Agreement. Copies may be transmitted electronically or in print form.

Libraries Australia means a web-based suite of services supplied by the NLA that provides access to the Australian National Bibliographic Database.

Library means any Australian library, and includes public, academic (including school, TAFE and University), joint use, national, state, territory and special (including government, health, law and corporate) libraries - which may participate in Electronic Resources Australia either individually or collectively.

Participant means:

- (a) the NLA; and
- (b) any other Library notified by NLA to the Contractor from time to time; and
- (c) any other Library who notifies the Contractor directly with reference to this Head Deed from time to time.

Product means a product, service or Product Package included on the Product List.

Product List means the list of Products, services and Product Packages specified in accordance with Attachment 1 of Schedule 3.

Product Package means a group of Products.

Purchase Order means a purchase order (regardless of the title of the document) that meets the requirements of clause 3.2. Without limiting the form or content of any actual Purchase Order that may be issued by NLA or any

other Participant under this Head Deed, Schedule 2 contains an example template of a Purchase Order that may be issued by NLA or a similar purchase order may be issued by another Participant.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Specifications has the meaning set out in Schedule 1.

Standard Contract Terms means the terms and conditions set out in Schedule 1.

Virtual Reference means information and reference services delivered by a Library to users who are physically remote from a Library via email or other online technology.

1.2 Construction – this Head Deed

In this Head Deed, unless the contrary intention appears:

- (a) words in the singular include the plural and vice versa;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) a reference to a clause or schedule is a reference to a clause or schedule to this Head Deed;
- (e) clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (f) a reference to dollars is a reference to Australian dollars;
- (g) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (h) “includes” means includes without limitation;
- (i) a reference to writing, or written, is a reference to any representation of words, figures or symbols, whether or not in a visible form; and
- (j) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.3 The parts of this Head Deed

- (a) This Head Deed comprises the following parts, which are to be interpreted in the following order of priority (from highest to lowest) so that a part of higher priority prevails over a part of lower priority to the extent of any inconsistency between them:
 - (i) Clauses 1 to 6 of this Head Deed; then
 - (ii) Schedule 1: the Standard Contract Terms; then
 - (iii) Schedule 3: the Product List, comprising:

- (a) Attachment 1: Products and Services;
 - (b) Attachment 2: Service Levels and Performance Standards;
 - (c) Attachment 3: Pricing;
 - (d) Attachment 4: Licence Agreement (if any); and then
 - (iv) Schedule 2: the Purchase Order generic terms and conditions.
- (b) The Contractor must comply with the Head Deed in respect of all Contracts placed under it.

2 Term of this Head Deed

- (a) This Head Deed commences on the Commencement Date and, subject to this Head Deed, will continue in force for a period of two (2) years from that date.
- (b) NLA may, at its sole discretion, extend this Head Deed for additional periods, each not exceeding two (2) years, by giving the Contractor notice at any time prior to three (3) months before the expiry of the then current term of this Head Deed.
- (c) In the event of an extension, the Contractor may submit to the NLA a request for variation of the Fees specified in the Product List and the NLA will consider such a request in good faith. Any changes will be made on the basis set out in clause 6.1.

3 Buying Deliverables

3.1 How a Contract is formed

If a Participant wishes to acquire a Deliverable from the Contractor:

- (a) the Participant will issue a Purchase Order for the Deliverable to the Contractor;
- (b) if the Purchase Order is accepted by the Contractor, a Contract for the provision of the Deliverable is formed between the Contractor and the Participant (as the Customer under that Contract);
- (c) the Contract comes into force on the date on which the Contractor accepts the completed Purchase Order or, if the Purchase Order states that the Contract is to come into force on some other date, that other date;
- (d) every detail necessary to complete a Purchase Order (including all details required to ensure that the Purchase Order complies with **clause 3.2**) must be agreed between the Participant and the Contractor before the Purchase Order is placed. If the details are unable to be agreed, then the Contractor must not accept the Purchase Order;
- (e) the Contractor may conduct such negotiations with a Participant as the Contractor and the Participant see fit, provided however, that such

negotiations must not be inconsistent with the processes and requirements set out in this Head Deed. Such discussions may, however, relate to products or services not expressly referred to in this Head Deed; and

- (f) in accepting a Purchase Order, the Contractor is not entitled to incorporate any terms and conditions or other documents that are inconsistent with this Head Deed (including the Standard Contract Terms). Any such inconsistent terms and conditions or other documents will not form part of the Contract formed by accepting the Purchase Order.

3.2 Purchase Order requirements

The Contractor must not accept a Purchase Order, and is not entitled to accept a Purchase Order, as one issued under this Head Deed unless the Purchase Order complies with the following requirements:

- (a) The Purchase Order must be issued by a Participant;
- (b) The Purchase Order must state that it is issued under (or made in accordance with or pursuant to) this Head Deed or the panel arrangements under this Deed. This statement may be made by referring to the title of (or other unique identifier for) this Head Deed or those panel arrangements;
- (c) Although the Purchase Order may also relate to Deliverables not included in the Product List, the Purchase Order must specify the supply of at least one Product from the Product List.;
- (d) The prices for a Product specified in the Purchase Order must not be any higher than the price specified for that Product in the Product List, but may be lower to reflect the Contractor's obligation in **clause 5.3**.
- (e) The Purchase Order must also include completed details of any other item of information required by a provision of the Standard Contract Terms to be stated in the Purchase Order terms in order to give substance and meaning to that provision; and
- (f) Although the Purchase Order may also incorporate additional terms and conditions or incorporate other documents, if there is any inconsistency between any terms and conditions of the Purchase Order and this Deed, this Deed (including the Standard Contract Terms) will prevail.

3.3 The parts of each Contract

The parts of each Contract, and the relative priority of each of those parts of the Contract, are specified in **clause 1.3** of the Standard Contract Terms.

4 No exclusivity or assurance

4.1 Acknowledgements

The Contractor acknowledges that

- (a) other contractors may execute a deed similar to this Head Deed; and
- (b) NLA and any other Participant may obtain products or services similar to the Deliverables from any other vendor, and may enter into similar arrangements to this Head Deed with other vendors. This Head Deed does not mean, and contains no representation or assurance, that:
 - (i) the Contractor (or any of its Related Bodies Corporate) has the right to be the sole or exclusive supplier of any Deliverable to NLA or any other Participant; or
 - (ii) that any Purchase Order will be placed with the Contractor.

4.2 New organisations

NLA may from time to time invite new organisations to join the panel of suppliers on the terms that are the same or similar to the terms of this Head Deed.

4.3 New products

NLA may from time to time invite all members of the panel to offer new products for inclusion in the Products List and panel members may offer new products for inclusion in the Products List at any time. Any changes will be made in accordance with **clause 6.1**.

5 Continuous Improvement

5.1 Performance standards (including reporting)

The Contractor must meet the service levels and performance standards set out in Attachment 2 of Schedule 3.

5.2 Innovation

The Contractor must perform this Head Deed in a manner that seeks to identify and implement innovation and continuous improvement including to the quality, effectiveness (including cost effectiveness) and efficiency of the Products and Deliverables. The Contractor must report on any innovation or improvements implemented in the performance of the Head Deed as soon as practical, but in any event in a timely manner after implementation. The NLA may, but is not obliged to, assist the Contractor to identify and or implement innovations and improvements.

5.3 Best available terms

The Contractor must ensure that Participants are not disadvantaged financially by participating in Electronic Resources Australia, either individually or collectively. The Contractor must therefore use best endeavours to ensure that the price charged to a Participant in Contracts is:

- (a) no higher than the price they would be charged if the Participants acquired the Deliverable on terms other than the Head Deed; and

- (b) no higher than the prices charged to any other person or group of persons for substantially similar products or services.

Individual pricing discrepancies may be reviewed, discussed and modified when discovered.

5.4 Other products or services

The NLA may invite the Contractor to offer additional products or services other than the current Deliverables for inclusion on the Product List. The Contractor's offer must set out:

- (a) the product or service;
- (b) the date of availability; and
- (c) the pricing.

If the NLA accepts an offer of additional products or services, the parties will vary Schedule 3 of this Head Deed in accordance with clause 6.1 to include the product or service.

6 General

6.1 Variations

No agreement or understanding varying this Head Deed will be legally binding on the Contractor or NLA unless:

- (a) made in accordance with express provisions of this Head Deed permitting that variation; or
- (b) otherwise made in writing and signed by authorised representatives of the Contractor and NLA.

6.2 Applicable Law

This Head Deed is governed by the laws for the time being in force in the Australian Capital Territory and the Contractor and NLA each submit to the non-exclusive jurisdiction of the courts having jurisdiction in the Australian Capital Territory, and any courts hearing appeals from those courts.

6.3 Assignment and novation

Neither the Contractor nor NLA may assign or otherwise transfer its rights under this Head Deed without the prior written consent of the other party.

6.4 Waiver

A waiver by the Contractor or NLA in respect of a breach or a provision of this Head Deed by the other party will not be deemed to be a waiver in respect of any other breach, and the failure of the Contractor or NLA to enforce at any time any of the provisions of this Head Deed will in no way be interpreted as a waiver of such provision.

6.5 Entire agreement

This Head Deed constitutes the entire agreement between the Contractor and NLA and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the Contractor and NLA with respect to the subject matter of this Head Deed.

6.6 Severability

Each provision of this Head Deed and each part of such provision, will, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provisions or part of such provision is void or otherwise unenforceable for any reason, then that provision or part (as the case may be) will be severed and the remainder will be read and construed as if the severable provision or part had never existed.

6.7 Notices

- (a) A notice under this Head Deed is deemed to have been given if it is in writing and:
- (i) if it is delivered by hand, on the date upon which it is delivered;
 - (ii) if it is sent by post, on the day upon which it would be delivered in the normal course of post;
 - (iii) if transmitted electronically, when the sender receives confirmation of a successful transmission.
- (b) The address for service of notice of each party is:

Address of NLA

Physical address

Parkes Place
PARKES ACT 2600
Australia

Postal address

Parkes Place
PARKES ACT 2600
Australia

Facsimile number: +61 (0)2 6273 1180
Attention: Executive Officer, Electronic Resources Australia
Telephone number: +61 (0)2 6262 1549

Address of the Contractor

Physical address

Level 1, 607 St Kilda Road
Melbourne VIC 3004
Australia

Postal address

PO Box 6509
St Kilda Road Central VIC 800
Australia

Copy to: General Counsel, ProQuest LLC
789 E. Eisenhower Parkway
PO Box 1346
Ann Arbor MI 48106-1346
United States of America

Facsimile number: +61 (0)3 8517 8322
Phone number: +61 (0)3 8517 8304

6.8 Effect of expiration or termination

If this Head Deed expires or it is terminated (however that termination occurs):

- (a) the accrued rights of the Contractor and NLA under this Head Deed remain unaffected except to the extent that they expressly agree otherwise; and
- (b) each Contract between the Contractor and a Participant remains unaffected except to the extent that they expressly agree otherwise.

Schedule 1

Standard Contract Terms

1 Interpretation – this Contract

1.1 Definitions – this Contract

In this Contract, unless the contrary intention appears:

Australian Content means works that are either published in Australia, or else written by, for or about Australia, Australians and/or the Australian experience.

Authorised User means the Customer's staff, members and patrons (including students and 'walk-in' users).

Available means a Product can be used by the Customer and its Authorised Users in accordance with its Specifications, and **Availability** has the same meaning.

Business Day means any day that is not a Saturday or Sunday or a national public holiday, and a 'national public holiday' is a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.

Commonwealth means the Commonwealth of Australia.

Confidential Information of a Party means information that:

- (a) is by its nature confidential;
- (b) the other Party knows or ought to know is confidential; and
- (c) is specifically identified as confidential in the Purchase

Order or other writing agreed by the Parties,

but does not include information that:

- (d) is or becomes public knowledge other than by breach of this Contract; or
- (e) has been independently developed or acquired by the Contractor such as aggregated usage data for royalty and usage reporting to third party providers.

Conflict of Interest means a conflict of interest likely to conflict with or restrict the Contractor in performing its obligations under this Contract fairly and independently.

Contract means the contract between the Contractor and the Customer, formed in accordance with the Head Deed.

Contract Material means all Material:

- (a) specifically created by or on behalf of the Contractor for the purpose of performing only this Contract; and
- (b) incorporated into, or supplied to the Customer with, a Deliverable.

Contract Start Date means the date on which the Contractor accepts the completed Purchase Order or, if the Purchase Order states that the Contract is to come into force on some other date, that other date.

Contractor has the same meaning as in the Head Deed.

Contractor Personnel means employees, officers, agents and subcontractors (and a subcontractor's employees, officers, agents and subcontractors) of the Contractor.

Customer means the Participant who issues the Purchase Order.

Customer Material means any Material provided by the Customer to the Contractor for the purposes of this Contract or which is copied or derived from Material so provided.

Deliverable, in relation to this Contract, means the Products and services specified in the Purchase Order.

Documentation, in relation to a Deliverable, means any documentation supplied by or on behalf of the Contractor with or in relation to the Deliverable.

Fees means the rates of payment, fees, charges, disbursements and any fixed prices (as appropriate) specified in the Purchase Order as payable by the Customer.

Full-text means an electronic record in a Product or Deliverable that includes all of the text from the original publication that the record represents and where possible includes, images, graphics and other representations.

GST means goods and services tax, and has the meaning given in clause 8.2.

Head Deed means head deed no. 06/044 between the Contractor and NLA.

Intellectual Property means all copyright and neighbouring rights, all rights in relation to inventions

(including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Loss means any loss, cost or expense (including legal costs and expenses on a solicitor and own client basis) or liability.

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

Moral Rights means the right of attribution, the right against false attribution and the right of integrity of authorship as defined in the *Copyright Act 1968* (Cth).

NLA means the National Library of Australia.

Ombudsman Legislation means the *Ombudsman Act 1976* (Cth) and any other Commonwealth, State or Territory legislation related to ombudsmen that affects the Customer and is relevant to this Contract,

Party, in relation to this Contract, means the Contractor or the Customer, as the case may be.

Participant has the same meaning as in the Head Deed.

Pre-existing Material means any Material created prior to the Contract Start Date or independently of this Contract.

Privacy Legislation means the *Privacy Act 1988* (Cth) and any other Commonwealth, State or Territory legislation related to privacy that affects the Customer and is relevant to this Contract, including any code of practice approved under the above

legislation and any privacy principles contained in the above legislation.

Product means a product, service or Product Package included on the Product List.

Product List means the list of products, services and Product Packages specified in accordance with Attachment 1 of Schedule 3 of the Head Deed.

Product Package means a group of Products.

Purchase Order has the same meaning as in the Head Deed, being the Purchase Order issued by the Customer to the Contractor.

Secure Network means a network (whether a stand alone network or a virtual network within the internet) which is only accessible to Authorised Users.

Specifications means technical or descriptive specifications of functional, operational, performance or other characteristics required of a Deliverable, as set out in the Product List, the Purchase Order or any Documentation.

Standard Contract Terms means this document, comprising Schedule 1 of the Head Deed.

1.2 Construction – this Contract

In this Contract, unless the contrary intention appears:

- (a) words in the singular include the plural and vice versa;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;

- (d) clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (e) a reference to a clause is a reference to a clause of this Contract;
- (f) a reference to dollars is a reference to Australian dollars;
- (g) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (h) “includes” means includes without limitation;
- (i) a reference to writing, or written, is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 The parts of this Contract

This Contract comprises the following parts, which are to be interpreted in the following order of priority (from highest to lowest) so that a part of higher priority prevails over a part of lower priority to the extent of any inconsistency between them:

- (a) these Standard Contract Terms, and any terms of the Head Deed incorporated by reference into this Contract; then
- (b) the details of the Purchase Order required to ensure that the Purchase Order complies with **clause 3.2** of the Head Deed; then
- (c) any other details of the Purchase Order (but only to the extent they are not inconsistent with the Head Deed or these Standard Contract Terms); then
- (d) any other document incorporated (by reference or otherwise) into the Contract (but only to the extent not inconsistent with the Head Deed or these Standard Contract Terms).

2 Term of this Contract

This Contract commences on the Contract Start Date and, subject to this Contract, will continue in force for the period specified in the Purchase Order.

3 No exclusivity or assurance

The Customer may obtain products or services similar to the Deliverables from any other vendor, and may enter into similar arrangements to this Contract with other vendors. This Contract does not mean, and contains no representation or assurance, that:

- (a) the Contractor (or any of its related bodies corporate) has the right to be the sole or exclusive supplier of any Deliverable to the Customer; or
- (b) any other purchase order will be placed with the Customer.

4 Existing contracts

Unless otherwise agreed in writing by the Parties, any contract entered into by the Customer and the Contractor prior to or independently of this Contract for the provision of deliverables similar to the Deliverables is not terminated or otherwise affected by this Contract.

5 Contractor's Obligations and Customer Rights

5.1 Primary obligations

The Contractor must:

- (a) provide each Deliverable in accordance with this Contract, including any requirements specified in the Purchase Order; and
- (b) ensure that each Deliverable complies with its Specifications.

5.2 Other obligations

- (a) The Contractor must provide any service comprised in a Deliverable:
 - (i) with all due skill and care;
 - (ii) using Contractor Personnel with all necessary expertise, experience and training; and
 - (iii) in accordance with any service levels or other performance standards included in its Specifications.
- (b) The Contractor must ensure that any Materials comprised in a Deliverable are, under normal use, free from defects in materials, design and workmanship.
- (c) The Contractor must use all reasonable efforts to ensure that

- any information comprised in a Deliverable is accurate, up-to-date and complete.
- (d) The Contractor must ensure that any Documentation is of a reasonable standard in terms of presentation, accuracy and scope, and published in English with all key terms, words and symbols adequately defined or explained.
- (e) The Contractor must:
- (i) ensure that the server on which a Product is installed has sufficient capacity and rate of connectivity to provide the Customer and its Authorised Users with a quality of service comparable to current standards in the World Wide Web on-line information provision industry; and
 - (ii) restore access to a Product as soon as possible in the event the Product ceases to be Available and/or there is an interruption or suspension of the Product.
- (f) If specified in this Contract, the Contractor must ensure that for the term of the Contract it, or a third party, provides Product support services to the Customer and its Authorised Users via email, including by answering email enquiries from the Customer and its Authorised Users relating to the use and/or functionality (but not the content) of a Product.

- (g) The Contractor, if specified in a Purchase Order and hence this Contract, must provide the Product support services referred to in clause 5.2(f) twenty-four (24) hours per day, seven (7) days per week during the term of the Contract.

5.3 Usage rights

- (a) The Customer has the right to:
- (i) permit multiple Customer workstations to access the Products, but only by Authorised Users; and
 - (ii) allow Authorised Users to access the Products from remote locations.
- (b) The Customer and its Authorised Users have the right to use any articles, extracts or other part of any Product as permitted by the *Copyright Act 1988 (Cth)* that is consistent with the Licence Agreement at Schedule 3, Attachment 4.

5.4 Usage obligations

- (a) The Contractor must make reasonable efforts to ensure the Product(s) are Available for the Customer and its Authorised Users twenty-four (24) hours a day, seven (7) days a week with an average monthly Availability of ninety nine percent (99%) and in any event will ensure that the average down time over a twelve (12) month period is no more than one percent (1%).
- (b) Subject to clause 5.4(a), the Contractor may restrict the Availability of a Product in order to perform the following activities:
- (i) routine Product maintenance;

- (ii) maintenance of the server on which the Product is installed;
 - (iii) installation or testing of software required for the provision of a Product;
 - (iv) the loading of data into a Product; or
 - (v) updating of the Product.
- (c) The Contractor will not be responsible for any non Availability of a Product caused directly by a failure of equipment, communication network or service beyond the control of the Contractor.
- (d) The Contractor must ensure that all of the activities specified in clause 5.4(b) are performed at times that minimise inconvenience to the Customer and its Authorised Users.

notices or other means of identification or disclaimers as they appear on articles or extracts from a Product;

- (ii) permit anyone other than Authorised Users to access or use the Products.

(c) The Customer agrees:

- (i) to promptly notify the Contractor if the Customer becomes aware that the Customer or an Authorised User suspects unauthorised use of a Deliverable;
- (ii) that, subject to a Deliverable complying with its Specifications, the Customer or its Authorised Users are responsible for the results obtained, and conclusions drawn, from use of the Deliverable by the Customer or its Authorised Users; and
- (iii) that the Customer will comply with all applicable laws in using a Deliverable.

6 Customer obligations

6.1 Usage obligations

- (a) The Customer agrees to comply with the following usage obligations in respect of each Product:
- (i) remote access to the Product using the Customer's security mechanism (such as a password) is permitted at the Customer's facilities or remotely by Authorised Users.
- (b) Subject to clause 5.3(c), the Customer must not (and must use reasonable endeavours to ensure its Authorised Users do not):
- (i) remove or alter the Contractor's correctly asserted copyright

6.2 Other Customer obligations

- (a) The Customer will use reasonable endeavours to ensure that Authorised Users comply with the terms of this Contract.
- (b) The Customer will obtain at its cost all telecommunications and other equipment and software (including an internet browser and portable document file reader) together with all relevant software licences necessary to access the

Products online via the Customer's Secure Network.

7 Payment

- (a) In consideration for the provision of each Deliverable, the Customer agrees to pay the Contractor the Fees in respect of that Deliverable.
- (b) The Customer will pay each correctly rendered invoice within 30 days after receipt, unless an alternative period for payment is specified in the Purchase Order.
- (c) An invoice will be correctly rendered if:
 - (i) the amount payable under the invoice is due and payable in accordance with this Contract;
 - (ii) it contains detail sufficient to enable the Customer, acting reasonably, to identify each Deliverable concerned, when the Deliverable was supplied and (if relevant) accepted, and the correct amount payable in respect of the Deliverable;
 - (iii) the invoice is correctly addressed to the Customer;
 - (iv) the invoice sets out all amounts paid by the Customer as GST and the taxable supplies to which the GST relates; and
 - (v) the invoice is a tax invoice and complies with the requirements of **clause 8**.

8

GST & other taxes

8.1

General taxes

Except as provided by this **clause 8**, each Party must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with its performance of this Contract.

8.2

GST

- (a) The following terms have the meanings respectively given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth):

consideration

GST

input tax credit

supply

taxable supply and

tax invoice.

- (b) Unless otherwise indicated, all consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.
- (c) If one Party (the **supplier**) makes a taxable supply to the other Party (the **recipient**) under this Contract, on receipt of a correctly rendered tax invoice from the supplier, the recipient must pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- (d) If an adjustment event arises in respect of a taxable supply made by a supplier under this document, the amount payable by the recipient under **clause 8.2(c)** will be recalculated to reflect the adjustment event and

a payment will be made by the recipient to the supplier or by the supplier to the recipient, as the case requires.

- (e) Without limiting **clause 8.2 (c)**, the supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 8.2 (c)**. The recipient is entitled to withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.
- (f) No Party may claim from the other Party under this Contract any amount for which the first party may claim an input tax credit.

9 Contractor Personnel

- (a) The Contractor must ensure that Contractor Personnel:
 - (i) are properly qualified and competent, of good faith and character who will act, in all the circumstances, in a fit and proper manner while they provide the Deliverables; and
 - (ii) have all knowledge of the Customer and its operations and interests that is necessary to enable the Contractor Personnel to properly provide the Deliverables.
- (b) The Contractor must ensure that, where the Purchase Order specifies any Contractor Personnel are to provide any part of the Deliverables, those Contractor Personnel must provide those parts of the Deliverables unless otherwise

agreed in writing with the Customer.

- (c) The Customer may, at its absolute discretion, give notice in writing to the Contractor to remove any Contractor Personnel from work in respect of the Deliverables. The Contractor must promptly arrange for the removal of such personnel and for their replacement with personnel acceptable to the Customer and at no additional cost to the Customer.

10 Subcontracting

- (a) The Contractor must not subcontract the provision of any part of the Deliverables without the prior written approval of the NLA.
- (b) The Contractor remains fully responsible for the provision of the Deliverables notwithstanding that the Contractor may have subcontracted the provision of any part of the Deliverables.
- (c) The Contractor must ensure that any subcontract for the provision of any part of the Deliverables (whether or not the Customer is a party to the subcontract) contains confidentiality and privacy provisions that are in substance the same as those contained in this Contract.

11 Intellectual Property

11.1 Pre-existing Material

This document does not affect the ownership by any person of the Intellectual Property in any Pre-existing Material.

11.2 Contract Material

Ownership of the Intellectual Property in all Contract Material vests in the Customer upon creation.

11.3 Customer Material

- (a) Ownership of the Intellectual Property in all Customer Material remains with the Customer or applicable third parties.
- (b) The Customer grants the Contractor, or will procure the grant to the Contractor of, a royalty-free, fully paid-up, non-exclusive licence to use, reproduce, communicate and adapt the Customer Material solely for the purposes of this Contract.

11.4 Deliverables

- (a) Subject to this clause 11.4, the Standard Contract Terms, to the extent that the Customer does not own the Intellectual Property in a part of a Deliverable, the Contractor grants the Customer, or will procure the grant to the Customer, a non-exclusive licence (with no right to sub-licence or transfer the licence, unless otherwise specified in this Contract) to use and communicate the Deliverable and any Documentation in accordance with this Contract.
- (b) For the avoidance of doubt, the rights and obligations in the Standard Contract Terms prevail over the terms of Attachment 4 at Schedule 3 to the extent of any inconsistency. Without limitation, any terms included in Attachment 4 at Schedule 3 dealing with restrictions on use, limitations on warranties, liability or payment arrangements have

no effect if they are inconsistent with the Standard Contract Terms;

- (c) The Contractor cannot terminate a licence or subscription for a Deliverable or withdraw support for a Deliverable despite any rights it has to do so in licence terms contained in Attachment 4 to Schedule 3, unless in accordance with this Contract.
- (d) The terms of Attachment 4 to Schedule 3 cannot be amended unless amended in accordance with the terms of the Contract.

12 Confidentiality

12.1 Prohibition on Disclosure

- (a) Subject to **clause 12.2**, a Party must not, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to a third party.
- (b) In giving written consent to the disclosure of its Confidential Information, a Party may impose such conditions as it thinks fit.

12.2 Permitted disclosure

- (a) The obligations on a Party under **clause 12.1** will not be taken to have been breached to the extent that Confidential Information:
 - (i) of the other Party is disclosed by a Party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
 - (ii) of the other Party is disclosed to a Party's internal management

personnel, solely to enable effective management or auditing of activities related to this Contract;

- (iii) of the other Party is authorised or required by law to be disclosed;
- (iv) of the other Party is in the public domain otherwise than due to a breach of this Contract;
- (v) of the other Party is discovered or otherwise known by the first Party other than by disclosure under this Contract;
- (vi) of the Contractor is shared by the Customer within its organisation, or with another Participant, where this serves the legitimate interests of the Customer or another Participant;
- (vii) of the Contractor is disclosed by the Customer to an auditor, ombudsman or privacy commissioner; or
- (viii) of the Contractor, where the Customer is an agency of the Commonwealth or of a State or Territory:
 - (a) is disclosed by the Customer to the responsible Minister; or
- (b) is required to be disclosed by the Customer to a House or a Committee of the Parliament of the Commonwealth of Australia or a State or Territory.

13 Privacy

13.1 Contractor's privacy obligations

The Contractor must comply with:

- (a) its obligations (if any) under any Privacy Legislation to the extent relevant to this Contract;
- (b) any applicable directions made by a privacy commissioner;
- (c) any privacy procedures required by the Customer and specified in the Purchase Order; and
- (d) any other reasonable direction relating to privacy given by the Customer.

13.2 No limitation

The Contractor's privacy obligations under this clause are in addition to, and do not restrict, any obligations it may have under any Privacy Legislation.

14 Conflict of Interest

- (a) The Contractor warrants that at the Contract Start Date, no Conflict of Interest, except as disclosed in writing to the Customer, exists.
- (b) The Contractor must use all reasonable endeavours (including making all appropriate enquiries) to ensure that:
 - (i) a situation does not arise which may result in a Conflict of Interest; and
 - (ii) any Contractor Personnel do not engage in any activity or obtain any interests likely to result in a Conflict of Interest.
- (c) If a Conflict of Interest arises, the Contractor must notify the Customer immediately of the situation and must follow all

reasonable directions made by the Customer about the method for handling the Conflict of Interest.

- (d) Subject to the above, the Contractor must not engage in any activity that may result in a Conflict of Interest arising or continuing.

15 Warranty and Indemnity

15.1 Warranty

The Contractor warrants that it has all rights, licences (including Intellectual Property licences), permissions, consents and waivers (including Moral Rights consents and waivers) necessary to lawfully perform this Contract.

15.2 Indemnity

- (a) The Contractor must at all times indemnify and hold harmless the Customer, its officers, employees, subcontractors and agents ("**those indemnified**") from and against all Loss whatsoever incurred or suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified if such Loss:
 - (i) was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Contractor in providing the Deliverables or in connection with this Contract; or
 - (ii) arises as a result of a third party claim that the use of a Deliverable by the NLA, a Customer or

an Authorised User in accordance with this Contract infringes the Intellectual Property rights of that third party.

- (b) The Customer may enforce this indemnity in favour of those indemnified for the benefit of each of such persons in the name of the Customer or of such persons.
- (c) The Customer must provide the Contractor with written notice of any suit or threatened suit for infringement brought against the Customer within thirty (30) days of the day of service of the complaint upon the Customer or from the receipt by the Customer of notice of a threatened suit.
- (d) The Contractor will not be liable under 15.2(a)(ii) if:
 - (i) dependent on the circumstances, any third party claim is based solely upon the use of the Deliverable in combination with programs, equipment or devices not supplied, designed or recommended by the Contractor; or
 - (ii) any third party claim arises out of the Customer's use of the Deliverables in a manner contrary to the rights granted in this Contract.
- (e) The Contractor's liability under this indemnity will be reduced proportionally to the extent that a wilfully wrongful, unlawful or negligent act or omission of one

of those indemnified contributed to the Loss.

- (f) This indemnity survives the expiration or early termination of this Contract.

16 Insurance

16.1 Minimum Level of Insurance

The Contractor must during the term of this Contract, at its own expense, effect and maintain with a reputable insurance company:

- (a) public liability insurance to the value of at least \$1.2 million per claim;
- (b) if the Deliverables include services requiring the exercise of professional skill and judgment, professional indemnity insurance to the value of at least \$1.5 million per claim;
- (c) if the Deliverables include products, product liability insurance to the value of at least \$2.4 million per claim; and
- (d) workers' compensation insurance for an amount required by the relevant State or Territory legislation,

in respect of liability arising out of any act or omission by the Contractor in connection with or related to the performance of its obligations under this Contract.

16.2 Evidence of insurance

The Contractor must, if reasonably requested by the NLA, provide evidence that is acceptable to the NLA, acting reasonably, of the insurance and its currency.

16.3 Absence of insurance

The Contractor must immediately advise the NLA if at any time during

the term of this Contract it for any reason ceases to comply with its obligations under **clause 16.1**.

17 Audit and Access

- (a) For the purpose of ensuring that this Contract is being properly performed and administered, the Contractor must participate in audits of this Contract at the frequency (including on an ad hoc basis if requested by the NLA) in relation to:
 - (i) the Contractor's compliance with any of its obligations under this Contract; and
 - (ii) other matters which the NLA determines to be relevant to the performance of the Contractor's obligations under this Contract.
- (b) The NLA may appoint an independent person to assist in the audits.
- (c) The Contractor must participate promptly and cooperatively in any such audits conducted by the NLA or its nominee.
- (d) Except in those circumstances where it is not practicable or appropriate (eg. caused by a regulatory request with shorter notice or investigation of theft or breach of contract), and without limiting any other right, recourse or remedy of the NLA, the NLA must give the Contractor reasonable notice of an audit and ensure that the person conducting the audit complies with any reasonable confidentiality, security and privacy requirements of the NLA.

18 Termination

18.1 Termination for cause

(a) If a Party fails to satisfy any of its obligations under this Contract, then the other Party – if it considers that the failure is:

- (i) *not capable of remedy* – may, by notice in writing, terminate this Contract (in whole or in part) immediately; or
- (ii) *capable of remedy* – may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Contract (in whole or in part) immediately by giving a second notice,

without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either Party.

(b) If the Contractor:

- (i) being a corporation, is subject to any change its direct or indirect beneficial ownership or control;
- (ii) disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (iii) ceases to carry on business;
- (iv) ceases to be able to pay its debts as they become due;
- (v) being a company, enters into liquidation or has a controller or managing

controller or liquidator or administrator appointed;

- (vi) being a natural person is declared bankrupt or assigns its estate for the benefit of creditors; or
 - (vii) being a partnership, takes any step to dissolve that partnership,
- the Customer may, by notice in writing, terminate this Contract effective immediately without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either Party.

18.2 Termination for convenience

(a) The Customer may, at any time with a minimum of thirty (30) days written notice, terminate this Contract, in whole or in part. If this Contract is so terminated, the Customer will be liable only for:

- (i) payment under the payment provisions of this Contract for Deliverables rendered before the effective date of termination; and
- (ii) subject to the other provisions of this **clause 18.2**, any reasonable costs incurred by the Contractor and directly attributable to the termination or partial termination of this Contract, except that the Customer will not be liable to pay compensation in an amount which would, in addition to any amounts paid or due (or becoming due) to the Contractor under this Contract, together exceed the Fees

otherwise payable under this Contract. The Contractor will not be entitled to compensation for loss of prospective profits.

- (b) Upon receipt of a notice of termination the Contractor must:
- (i) stop providing Deliverables as specified in the notice;
 - (ii) take all available steps to minimise loss resulting from that termination and to protect the Customer Material and Contract Material;
 - (iii) continue to provide any part of the Deliverables not affected by the notice; and
 - (iv) provide any pro-rated refund or credit due to the Customer.

19 Dispute resolution

19.1 Procedure for dispute resolution

The Parties agree that a dispute arising under this Contract will be dealt with as follows:

- (a) the Party claiming that there is a dispute will give the other Party a notice setting out the nature of the dispute;
- (b) within 5 Business Days, each Party will nominate a representative not having any prior involvement in the dispute;
- (c) the representatives will try to settle the dispute by direct negotiation between them;
- (d) failing settlement within a further 10 Business Days, the Parties may agree to refer the dispute to

an independent third person with power:

- (i) to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution; or
 - (ii) to mediate and recommend some form of non-binding resolution;
- (e) the Parties will cooperate fully with any process instigated under **clause 19.1(d)** in order to achieve a speedy resolution; and
- (f) if a resolution is not reached within a further 20 Business Days, either Party may commence legal proceedings.

19.2 Costs

Each Party will bear its own costs of complying with this **clause 19**, and the Parties must bear equally the cost of any third person engaged under **clause 19.1(d)**

19.3 Continued performance

Despite the existence of a dispute, the Contractor must (unless requested in writing by the Customer not to do so) continue to perform the Deliverables.

19.4 Exemption

This **clause 19** does not apply to:

- (a) action by either Party under or purportedly under **clause 18.1**;
- (b) action by the Customer under or purportedly under **clause 18.2**; or
- (c) legal proceedings by either Party seeking urgent interlocutory relief.

20 Compliance with laws and policies

20.1 General compliance

The Contractor agrees, in carrying out this Contract, to comply with all relevant legislation of the Commonwealth or of any State, Territory or local authority, including any legislation and any government policies, practices or like compliance requirements specified in the Purchase Order:

20.2 Ombudsman investigation

The Contractor:

- (a) acknowledges that it may be considered a "service provider" under any Ombudsman Legislation and that it may be subject to investigation by the relevant ombudsman under that legislation; and
- (b) acknowledges and agrees that it will bear the cost of any investigation of its activities by relevant Ombudsman in connection with the subject matter of this Contract.

20.3 Equal opportunity for women

The Contractor agrees to use its best endeavours to ensure that it does not enter into a subcontract with a subcontractor reported by the Equal Opportunity for Women in the Workplace Agency under the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) as an employer currently not complying with that Act (or by an equivalent State or Territory authority for not complying with equivalent State or Territory legislation).

21 General

21.1 Application of some terms of the Head Deed to this Contract

The following clauses of the Head Deed are incorporated into this Contract as if they were repeated here, except that references to the "Head Deed" in those clauses are to be read as references to this "Contract", and references to "NLA" in those clauses are to be read as references to the "Customer".

- (a) **clause 5.3** (Best available terms)
- (b) **clause 6.1** (Variations)
- (c) **clause 6.2** (Applicable Law)
- (d) **clause 6.3** (Assignment and Novation)
- (e) **clause 6.4** (Waiver)
- (f) **clause 6.5** (Entire Agreement)
- (g) **clause 6.6** (Severability)

21.2 Notices

- (a) A notice under this Contract is deemed to have been given if it is in writing and:
 - (i) if it is delivered by hand, on the date upon which it is delivered;
 - (ii) if it is sent by post, on the day upon which it would be delivered in the normal course of post;
 - (iii) if transmitted electronically, when the sender receives confirmation of a successful transmission.
- (b) The address for service of notice of each Party is the address set out in the Purchase Order.

21.3 Effect of expiration or termination

If this Contract expires or it is terminated (however that termination occurs):

- (a) the accrued rights of the Contractor and the Customer under this Contract remain unaffected except to the extent that they expressly agree otherwise; and
- (b) each other Contract between the Contractor and the Customer remains unaffected except to the extent that they expressly agree otherwise.

21.4 Force Majeure

The Customer and the Contractor will not be responsible to one another for any failure to perform any obligation

under this Agreement due to Acts of God, war, riot, embargoes, acts of civil or military authorities, fire, flood, typhoon, wind storm, snow storm, blizzard, hurricane, or other cause that is outside the control of the Party and could not be avoided by the exercise of due care. Notwithstanding the occurrence of any of the events set forth in this clause, the Parties will at all times use reasonable efforts to perform all obligations under this Contract in a timely manner, taking account of the existing circumstances. This clause does not apply to failures arising from the acts or omissions of the Contractor, its personnel or subcontractors (such as content providers).

Schedule 2

Participant's Purchase Order

The Participant's standard Purchase Order is provided direct to the Contractor. The content of the Purchase Order should refer to the following information (with the use of an attachment if necessary).

No.	Head Deed Clause	Required Information
1	Clause 3.2 (Purchase Order Requirements)	<i>A reference to this Head Deed or the panel arrangements under this Head Deed.</i>
2	Clause 3.2 (Purchase Order Requirements)	<i>A description of the Deliverables, including at least one Product included in the Product List. For each Deliverable, state whether the subscription is for an Australian financial year or a calendar year.</i>
	Standard Contract Terms Clause	Required Information
3	Clause 2 (Term of Contract)	<i>Specify a Contract Start Date. If no Contract Start Date is specified, the Contract Start Date will be the date on which the Contractor accepts the completed Purchase Order. Specify the period for which the Contract will continue in force. If a perpetual licence is being granted to the Customer for a Deliverable, the period should be stated as continuing until termination in accordance with this Contract.</i>
5	Clause 7 (Payment)	<i>Specify the Fees payable by the Customer in respect of the Deliverables (as specified in Schedule 3).</i>
6	Clause 9 (Contractor Personnel)	<i>If there are any Contractor Personnel specified for provision of the Deliverables, specify them here and specify that part of the Deliverables they are required to provide.</i>

Schedule 3

Product List

1. As at the Commencement Date the Product List comprises:
 - list of products and services (Attachment 1);
 - minimum service levels, performance standards, functionality (Attachment 2); and
 - prices for those products and services (Attachment 3).
2. The provision of Deliverables will require the Participant to sign a Contractor licence agreement for the period specified within the Purchase Order. Consistent with **clause 1.3** of this Head Deed, the Contractor licence agreement that will apply for any Participant at the Commencement Date appears at Attachment 4.
3. The Product List may be updated from time to time during the term of this Head Deed by the Contractor and NLA agreeing the updates and making the updated Product List available at <http://era.nla.gov.au/>.

Schedule 3

Attachment 1: Products and services

- *ABI/INFORM Complete™*
- *Academic Research Library™*
- *Asian Business & Reference™*
- *eLibrary® Australasia*
- *Health & Medical Complete™*
- *ProQuest® Australia & New Zealand Newsstand*
- *ProQuest Science Journals*

Schedule 3

Attachment 2: Service Levels and Performance Standards

Deliverables available under the Electronic Resources Australia panel arrangement, will be presented in the following six categories:

1. **'Australian News & Business Information'**

Australian News & Business Information Deliverables must index, abstract and provide Full-text access to a range of national, regional and rural sources including, but not limited to, newspapers, newswires, journals and other news and business information with a focus on Australian topics.

2. **'General Reference'**

General Reference Deliverables must provide access to one or more general reference works such as dictionaries or encyclopaedias with a focus on a broad range of Australian topics.

3. **'Health Information'**

Health Information Deliverables must index, abstract and provide access to a range of Full-text sources including, but not limited to, journals, newsletters, pamphlets, reports, reference works and other health and wellness information with a focus on topics for Australian consumers and health professionals.

4. **'Science & Technology'**

Science & Technology Deliverables must index, abstract and provide access to a range of Full-text sources including, but not limited to, journals, newsletters, pamphlets, reports, reference works and other science & technology information with a focus on topics for Australian users.

5. **'Humanities & Social Sciences'**

Humanities & Social Sciences Deliverables must index, abstract and provide access to a range of Full-text sources including, but not limited to, journals, newsletters, pamphlets, reports, reference works and other humanities and social science information with a focus on topics for Australian users.

6. **'Legal Information'**

Legal Information Deliverables must index, abstract and provide access to a range of Full-text sources including, but not limited to, journals, newsletters, pamphlets, reports, reference works and other legal information with a focus on topics for Australian consumers and legal professionals.

1. FUNCTIONAL REQUIREMENTS

1.1 Content

1.1.1 The Contractor must ensure that its Products and Deliverables:

- (a) Are offered (at a minimum) in the English language;
- (b) Are presented as a structured database of fully indexed entries, citations, records or articles;
- (c) Include, wherever possible, images, graphics and other representations available in any alternative print version/s; and
- (d) Are updated at least quarterly.

1.1.2 The Contractor must ensure that up-to-date information about its Products and Deliverables is readily available to the NLA, the Customer and Authorised Users. The information must include the following:

- (a) Number of records (Full-text and other) in the Product/Deliverable;
- (b) The average number of records added to the Product/Deliverable per month or quarter;
- (c) Percentage of content that is Australian Content;
- (d) Types of sources included and indexed (eg dictionaries, encyclopaedias, newswires, newspapers, journals, conference proceedings, books, reports etc.);
- (e) Comprehensive list of each source indexed (eg news service, book title/series title/journal title etc.) detailing the publisher and publication year or earliest and latest publication date for continuing resources. Whether each source is selectively or comprehensively indexed and/or peer reviewed;
- (f) Subject areas covered (ie humanities, sciences etc.);
- (g) Criteria for selection of sources for inclusion within the Product/Deliverable;
- (h) Number and type of any multimedia formats included within the Product/Deliverable (eg images, video clips, audio files etc.) and any additional software required to access this content;
- (i) Update frequency or schedule (which must be at least quarterly);
- (j) Intended audience or readership;
- (k) The average length of time between the print and/or electronic publication of sources and the time they are indexed within the Product/Deliverable;
- (l) Percentage of records in Full-text;
- (m) Formats in which any content is presented (eg PDF, HTML, etc.) and details of any additional software required for access (eg Adobe Acrobat, multimedia viewers/readers); and

- (n) Any indication of embargo periods for content contributed to the Product/Deliverable.

1.2 Record specifications

1.2.1 The Contractor must ensure that all records and citations in its Products and Deliverables include the following information:

- (a) Author/s;
- (b) Title;
- (c) Source (eg title, ISBN/ISSN, volume, issue, publication date, pages etc. for/within a work);
- (d) Abstract (as applicable); and
- (e) Subject/s.

1.3 Full-text and Australian Content requirements

1.3.1 The Contractor must ensure that all Products and Deliverables:

- (a) Have a minimum of 50% of content that is Full-text in HTML or Portable Document Format (PDF) formats; and
- (b) Maintain, at least the level of Australian Content available at the Commencement Date throughout the Term of the Head Deed.

1.3.2 The Contractor must use reasonable efforts to increase the percentage of Australian Content for each Product and Deliverable each year.

1.4 Special features

1.4.1 The Contractor must:

- (a) Provide information to the NLA and the Customer about any special or customisable features of its Products and Deliverables (eg visual searching, clustering of result sets, Really Simple Syndication (RSS) feeds, toolbar browser add-ins, alerts, options for branding or personalisation, messaging, usage reports, email feedback/request options) and how they may be offered and promoted to users;
- (b) Be committed to on-going Product development, implementing innovation and improvement including the quality, effectiveness and efficiency of delivery of Products and Deliverables; and
- (c) Offer a means for the Customer and other Participants to provide feedback for the improvement of its Products and Deliverables.

1.5 Authorised use

1.5.1 The Contractor must ensure that Deliverables are made available as follows:

- (a) To the Customer and its Authorised Users;
- (b) For both on-site and remote access for Authorised Users;
- (c) On an organisational-wide basis (eg for a remote library branch or campus locations or across a Library Service);
- (d) For an unlimited number of concurrent users from each of the Participants;
- (e) For use in the provision of Virtual Reference services (eg via email or online chat); and
- (f) For supply by Interlibrary Loan and Document Delivery.

1.6 Additional services

1.6.1 The Contractor will assist with the implementation strategy for Electronic Resources Australia, including:

- (a) Promoting Electronic Resources Australia and encouraging Libraries that are interested in its products or services to subscribe under the Head Deed. (Promotional material produced by the Contractor must be approved by the NLA before use).
- (b) Offering free product trials for Libraries considering subscribing under the Head Deed; and
- (c) Directly engage with Participants (eg at annual user meetings as well as relevant professional conferences, meetings, forums, road shows, and via newsletters and listservs etc.) to ensure they gain maximum value from the Deliverables to which they subscribe under the Head Deed.

1.7 Reporting

1.7.1 The Contractor must give to the Executive Officer each month during the term of the Head Deed a written report setting out:

- (a) All of the Participants (including their name, their Library type and the State/Territory in which they are located).
- (b) For each Participant, a list of the Deliverables to which they have current subscriptions and the price of each subscription.
- (c) The level of Availability achieved by each Deliverable provided under a Contract for the previous month.
- (d) Details of any licences or subscriptions terminated in accordance with this Contract.

- 1.7.2 The Contractor must give to the Executive Officer each 6-months during the term of the Head Deed a written report setting out:
- (a) Advance notice of up-coming enhancements to Products and Deliverables;
 - (b) Without limiting clause 5.2 of the Head Deed, a summary of any changes or improvements to Products and Deliverables over the previous six (6) month period;
 - (c) Activities undertaken (or proposed to be undertaken) by the Contractor to promote Electronic Resources Australia; and
 - (d) Details of increases in Australian content during the reporting period.

1.8 Participant support

- 1.8.1 Subject to the Standard Contract Terms, the Contractor must provide the following minimum level of support to Participants:
- (a) Access availability to Deliverables from the commencement date of the subscription period/s;
 - (b) Customer and technical support available from 9:00am to 5:00pm Australian Eastern Standard Time, Monday-Friday (except nationally declared, Australian public holidays) via telephone (toll-free within Australia with alternative back-up telephone), fax and email;
 - (c) Two (2) business day response time for requests from the Executive Officer, or Australian libraries for subscription, assistance or advice;
 - (d) Resolution of problems within a reasonable timeframe, but not more than five (5) business days;
 - (e) Provision of a variety of training and promotional materials in print and/or electronic form at no additional charge (eg posters, bookmarks, newsletters, web-banners, logos, downloadable search boxes, documentation for users, brochures, answers to FAQs, online tutorials/demonstrations, product tours and overviews, fact sheets, navigation guides, search tips etc logos etc.) to promote Deliverables, Products and Electronic Resources Australia;
 - (f) Active participation in promotional events associated with Electronic Resources Australia; and
 - (g) Training on the search and administration aspects of Deliverables, scheduled by mutual agreement (as required) at no additional cost to the Participant (eg face-to-face sessions, pod or web casts).

1.9 Other Contractor responsibilities

1.9.1 The Contractor must:

- (a) Work with Electronic Resources Australia and its governance group through the Executive Officer to reflect the intent of the Head Deed.;
- (b) Attend the annual meeting of Participants provided that it is given at least two months notice of the date and location.

1.9.2 From the Commencement Date, The Contractor is to co-operate with the governance group through the Executive Officer in good faith. To avoid doubt, acting in good faith means:

- (a) Acting honestly;
- (b) Cooperating in the performance of the Head Deed;
- (c) Doing all the things necessary to enable the Participants to have the benefit of this Head Deed in accordance with its terms;
- (d) Acting reasonably in the exercise of powers and discretions under, and the performance of obligations in relation to, this Head Deed'; and
- (e) Not impairing the basis of the Head Deed.

2. TECHNICAL REQUIREMENTS

2.1 Access

2.1.1 The Contractor must ensure that all Products and Deliverables:

- (a) Are Web-based resources;
- (b) Are Available Australia-wide, 24 hours per day, 7 days per week with an average monthly Availability of ninety nine percent (99%) (The one percent unavailability includes unavailability for scheduled maintenance, testing, equipment failure, etc);
- (c) Enable Participants to offer both on-site and remote access to Authorised Users; and
- (d) Allow Authorised User access to be managed with appropriate mechanisms, including Internet Protocol (IP) address authentication, registered patron ID or barcodes, library managed passwords, referring URL authentication, EZproxy, cookies, Shibboleth and Athens.

2.2 User interfaces

2.2.1 The Contractor must ensure that the search and administration interfaces of all of its Products and Deliverables are offered via a Web-based interface that is compatible with any computer (ie PC or MacIntosh) or networked workstation running one of the following browsers:

- (a) Internet Explorer 5.5;

- (b) Netscape 7.0+; or
 - (c) Mozilla Firefox 1.0+.
- 2.2.2 The Contractor must ensure that the administration interface supports the following functions:
- (a) Subscription checking;
 - (b) Customisation (eg search defaults, inclusion of logos and branding, email preferences, etc.);
 - (c) Scheduling and generating usage statistics in a variety of report forms (eg usage by library by database/ title per library, turnaways, number of queries/ sessions, by method of access, referred URL etc in Microsoft® Excel, Access or Word formats, HTML, comma/tab delimited reports, CVS, download files, by email or as on-screen displays); and
 - (d) Setting of search options and defaults.
- 2.2.3 Support for the following functions in the administration interface is desirable and if provided, must be specified in Attachment 4 or the Purchase Order. The Contractor must use reasonable endeavours to ensure that the administration interfaces of its Products and Deliverables include such functions:
- (a) Registration of OpenURL resolver addresses;
 - (b) OpenURL server specification;
 - (c) Links to holdings; and
 - (d) Customer URLs.
- 2.2.4 The Contractor must ensure that the user and administration interfaces comply with the Australian Government's minimum website accessibility guidelines¹.

2.3 Searching

- 2.3.1 The Contractor must ensure that its Products and Deliverables have:
- (a) Searching options for inexperienced (ie 'basic') and expert (ie 'advanced') Authorised Users as follows:
 - (i) The 'basic' search should be a simple search box that searches across a number of key fields (eg author, title, subject, publication details);
 - (ii) The 'advanced' search options should include: Boolean logic, keyword, proximity, truncation, phrase-searching and Index browsing;
 - (b) Support searching across a number of fields within records as applicable (eg author, title, source, abstract and subject);
 - (c) Browsing; and

¹ <http://www.agimo.gov.au/practice/mws/accessibility/>

(d) Online help.

2.3.2 The Contractor must ensure that its Products and Deliverables allow:

- (a) Searching of cited references within records; and
- (b) The application of limits before and after executing a search with options including, but not limited to, date published, place published, publication type etc.

2.4 Personalisation

2.4.1 The Contractor acknowledges that the NLA considers support for the following functions to be desirable (support details will be specified in Attachment 4 or the Purchase Order):

- (a) Establishment of personalised accounts against which preferences, search strategies and records may be saved between sessions.
- (b) Save, print and email record options.
- (c) Access to search histories;
- (d) An ability to set up email alerts for new content (eg journal articles or other materials) that satisfy a saved search strategy; and
- (e) An ability to define and save individual preferences between sessions (eg default search type, display of results etc.)

2.5 Usage statistics

2.5.1 The Contractor must ensure that Deliverables enable the Customer to obtain statistics that are:

- (a) International Coalition of Library Consortia (ICOLC) and/or COUNTER (Counting Online Usage of Networked electronic resources) compliant;
- (b) Updated at least daily;
- (c) Able to be generated in report form at least monthly; and
- (d) Available in a variety of report forms (eg usage by library by database/ title per library, turnaways, number of queries/ sessions, by method of access, referred URL etc in Microsoft® Excel, Access or Word formats, HTML, comma/tab delimited reports, CVS, download files, by email or as on-screen displays).

2.5.2 The Contractor must ensure that the statistics described in clause 2.5.1 above are provided to the Executive Officer on request.

2.6 Machine Readable Cataloguing (MARC) records with holdings information

- 2.6.1 The Contractor must supply Machine Readable Cataloguing (MARC) records for each source included within its Products and Deliverables including books, journals, reports etc. to Participants and the Australian National Bibliographic Database (ANBD) so that they may be rendered accessible via the Libraries Australia service (<http://librariesaustralia.nla.gov.au/>).
- 2.6.2 The Contractor must ensure that all MARC records:
- (a) Conform to the Anglo American Cataloguing Rules 2 (AACRC2) 'level 2' standard;
 - (b) Are available for delivery via the World Wide Web or by File Transfer Protocol (FTP) at least monthly or whenever the Product or Deliverable is updated; and
 - (c) Include holdings details for libraries which are members of Libraries Australia and subscribing via the Head Deed or provide Libraries Australia with a listing of subscribing Libraries every six (6) months.
- 2.6.3 In the case of encyclopaedias, a single MARC record is required for the complete work.

2.7 Linking

- 2.7.1 The Contractor must ensure that its Products and Deliverables support standard linking features to enhance end-user access within and beyond the Product or Deliverable. The Product or Deliverable must:
- (a) Use permanent URLs to link to individual records within the Product or Deliverable; and
 - (b) Be searchable by federated search engines using standard protocols such as Z39.50 and HyperText Transfer Protocol (HTTP).
- 2.7.2 Support for both in-bound and out-bound open-URL linking using the National Information Standards Organization (NISO) standard is desirable.

2.8 Export of Data

- 2.8.1 The Contractor must ensure that its Products and Deliverables allow users to generate output by a number of methods, including:
- (a) Export by email; and
 - (b) Export by a format suitable for printing.
- 2.8.2 The Contractor must ensure that its Products and Deliverables allow the export of data from the Product or Deliverable in a format that allows for re-import into bibliographic citation tools (eg EndNote®, ProCite® and Reference Manager®).

2.9 Article-level metadata

2.9.1 The Library wishes to provide a cross-vendor searching capability (at an article level) for Electronic Resources licensed through ERA. The Contractor must make article-level metadata for each Deliverable available for cross-vendor searching, either:

- a) by providing a copy of the metadata to the Library;
- b) by exposing their metadata through a standard search protocol (such as SRU or Z39.50); or
- c) by exposing their metadata through an Application Programming Interface (API).

Schedule 3

Attachment 3: Pricing

1. Prices

- 1.1 The Contractor must not increase the price of any Product during the first two (2) years after the Commencement Date.
- 1.2 An annual subscription may be for either an Australian financial year cycle (ie 1 July – 30 June) or a calendar year (1 January – 31 December) as specified in a Purchase Order. The price for a subscription will be pro-rated if the subscription is for less than a year (eg if the Customer takes a part year subscription to transition from its existing arrangement to the new Electronic Resources Australia panel arrangement).
- 1.3 Prices include:
 - (a) Applicable Australian Goods and Services Tax (GST); and
 - (b) All charges necessary and incidental to the proper provision of the Deliverables.

2. Process for the confirmation of prices

- 2.1 The Executive Officer will annually call for expressions of interest from Participants for subscriptions to Products.
- 2.2 At least two (2) months before commencement of subscriptions, the Executive Officer will advise the Contractor of the number of Participants intending to subscribe to its Products for the following year (including Participants with existing calendar year subscriptions that are due for renewal after 1 July) and this will establish the subscription prices as based on the pick-up rates or other innovated pricing specified within this Schedule.
- 2.3 Participants wishing to subscribe to a Product after prices have been established for the current year, will be offered the price for the current subscription period pro-rated to the end of the year.

3. Agreed pricing

- 3.1 The prices for Products are set out in the tables in this clause 3.
- 3.2 Prices are quoted in Australian dollars (\$AUD) unless otherwise stated and apply to annual subscriptions which are placed for a minimum twelve (12) month period (or subscriptions that a pro-rated in accordance with this Attachment 3).
- 3.3 The Contractor warrants that Australian GST will be applicable to any Product or Deliverable.

Schedule 3

Attachment 4: Licence agreement

Below is the Contractor licence agreement.

Electronic Product License Agreement consists of:
 Custom Terms and Conditions INTL 1108
 ProQuest Customer Order Form
 Additional Site/Member Libraries (if applicable)



By signing this Electronic Products License Agreement, ProQuest licenses you the Products subject to the Terms and Condition and you certify that you are authorized to enter into this Agreement on behalf of the Subscribing Institution.

Subscribing Institution: National Library of Australia Authorization by Customer (Licensee): Signature: _____ <div style="text-align: center; color: red; font-size: small;">Duly Authorized Signature</div> Name: _____ Title: _____ Date Signed: _____	Authorization by ProQuest LLC (Licensor): Signature: _____ <div style="text-align: center; color: red; font-size: small;">Duly Authorized Signature</div> Name: _____ Title: _____ Date Signed: _____
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Custom Terms and Conditions

● COS ● CSA ● Chadwyck-Healey ● Culture Grams ● eLibrary ● Micromedia ProQuest ● ProQuest ● SIRS ●

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2. **Authorised Users.** By “Authorised User” we mean only: (1) For public libraries: library staff, individual residents of your reasonably defined geographic area served and walk-in patrons while they are on-site; (2) For schools and other academic institutions: currently enrolled students, faculty, staff, visiting scholars and walk-in patrons while they are on-site; and (3) For other types of organizations: your employees, independent contractors and other temporary workers while they are performing duties within the scope of their employment or assignment.
3. **Remote Access.** If your subscription allows you to provide remote access to a Product, you will strictly limit such access to Authorised Users through the use of passwords, IP addresses or other secure method of user verification. You will not share access with other institutions or third parties either directly or indirectly. You will immediately notify us if you believe your security has been compromised.
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- g. MARC Records. You may load ProQuest's MARC record Products into your Online Public Access Catalog (OPAC) containing your library holdings provided such records are not loaded into a shared online catalog system such as WorldCat without ProQuest's prior written consent.
- h. Scholar/Researcher Profiles. The data contained within scholar profiles within our products are for use in facilitating research and collaboration amongst colleagues. Neither you nor your Authorized Users may export or otherwise exploit the scholar profiles for mass mailings or similar marketing purposes.

6. Supplemental Terms.

- a. Updates. ProQuest will announce any substantial additions, deletions or modifications of information, databases, materials, capabilities or services within the Products on its electronic mailing list service. These shall be subject to the terms and conditions of this Agreement at the time they are added to the Products, but shall not materially alter your use of the Products. If such modifications materially alter your use of the Products, ProQuest will work with you to come to a mutually agreeable arrangement regarding replacement of such content which may include replacing lost content with new products or additional collection(s).
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7. Fees and Payments. You agree pay the fees for the Products as shown on the order form, attached invoice, or accepted purchase order within thirty (30) days of your receipt of your invoice.

8. Term and Termination.

- a. **Term.** For subscription-based Products, the term of your rights and access shall continue from the Start Date until the Expiration Date as those are listed on the Order Form or an accepted purchase order for each such Product, plus any renewal term(s) agreed to. For CD-ROM and FTP databases, you are granted a perpetual license to the most current version purchased, subject to the continued application of Acceptable Use Provisions of this Agreement (Section 1-6, above). This Agreement shall continue in force for so long as you are within the term of at least one ProQuest Product.
 - b. **Termination for Breach.** If a party breaches any material term of this Agreement and does not cure after 30 days written notice, the Agreement may immediately be terminated in whole or as to the affected Product. In the event the license granted under this agreement is terminated you shall disable all Products in your possession. This includes the destruction of any CD-ROMs, FTP databases or any software as well as any downloaded copies retrieved from the Products. In addition, ProQuest reserves the right to pursue any other legal remedy available to it.
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13. **Miscellaneous.**

- a. **Assignment.** Neither Party may assign this Agreement nor any right granted hereunder without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- b. **Taxes.** Except to the extent that you are tax-exempt as to the tax in question, you are responsible for any sales, use, VAT, personal property or other local taxes (except those based on ProQuest's income) or import duties imposed on the Products.
- c. **Waiver.** Failure to enforce any provision of this Agreement shall not be construed to be a waiver of such provision.
- d. **Force Majeure.** Neither Party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to acts of God, Government Restrictions (including the denial or cancellation of any export or other necessary license), wars, acts of terrorism and/or any other cause beyond the reasonable control of the party whose performance is affected.
- e. **Interruption of On-line Products.** Neither ProQuest nor its licensors shall be liable or deemed in default of this Agreement for any failure or delay or interruption in the on-line Products or any failure of any equipment or telecommunications resulting from any cause or circumstance beyond the reasonable control of ProQuest. If, however, the on-line Product is unavailable due to circumstances within ProQuest's reasonable control for a period of six hours in a 24 hour period not including times scheduled for normal systems maintenance and upgrades, the subscription terms shall be extended one day (24 hours) for each six hours of downtime as described above.
- f. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes any and all previous and contemporaneous understandings or agreements between the parties with respect to the same subject matter and may not be amended, except in a writing signed by the parties. The terms of your Purchase Orders, if any, are for your convenience and do not supersede any term or condition of this Agreement.
- g. **Severability.** If any provision of this Agreement is found invalid or unenforceable pursuant to a decree or decision of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable according to its terms.
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