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Library Board of Victoria

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[Insert name of contracting party]

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# Agreement for the Provision of General Services

(single purchase)

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Date

## Parties

**The Library Board of Victoria**, a body corporate established under the *Libraries Act 1988 (Vic)*, of 328 Swanston Street, Melbourne Victoria 3000  
(**Library**)

[Insert] ABN [#] of [Insert] (**Service Provider**)

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## Background

- A The Service Provider wishes to provide the Services to the Library.
  - B The Library has agreed to engage the Service Provider to provide the Services on and subject to the terms of this Agreement.
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## Agreed terms

### 1 Interpretation

#### 1.1 Definitions

In this Agreement:

**Agreement** means this agreement and includes the schedules and any annexures to it or documents incorporated by reference.

**Business Day** means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993 (Vic)*) in Melbourne.

**Code of Practice** means a code of practice as defined in, and approved under, the *Information Privacy Act 2000 (Vic)*.

**Commencement Date** means the date set out in **Item 1 of Schedule 1**.

**Completion Date** means the date (if any) set out in **Item 1 of Schedule 1** as that date may be extended in accordance with this Agreement.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about, or in anyway related to, the Library, including any information designated by the Library as confidential, which is disclosed, made available, communicated or delivered to the Service Provider in connection with this Agreement, but excludes information:

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- (a) which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;
- (b) which the Service Provider can demonstrate was in its possession prior to the date of this Agreement;
- (c) which the Service Provider can demonstrate was independently developed by the Service Provider;
- (d) which is lawfully obtained by the Service Provider from another person entitled to disclose such information; or
- (e) which is disclosed pursuant to legal requirement or order.

**Contract Intellectual Property** means any and all Intellectual Property Rights incorporated or comprised in any materials created by or on behalf of the Service Provider in the course of providing the Services.

**Control** means, in relation to any body corporate, the ability of any person directly or indirectly to exercise effective control over the body corporate (including the ability to determine the outcome of decisions about the financial and operating and other policies of that body corporate) by virtue of the holding of voting shares, units or other interests in that body corporate or by any other means.

**Fees** means a fixed fee payable to the Service Provider for the provision of the Services, determined in accordance with the Price Schedule.

**Information Privacy Principles** means the information privacy principles set out in the *Information Privacy Act 2000 (Vic)*.

**Intellectual Property Rights** includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Laws** means:

- (a) the law in force in the State and the Commonwealth of Australia, including common law, legislation and subordinate legislation; and
- (b) ordinances, regulations and by-laws of relevant government, semi-government or local authorities.

**Pre-Existing Intellectual Property** means any and all Intellectual Property Rights in any works, items or systems which are the property of the Service Provider and which existed in substantially the same form and with substantially the same contents prior to the commencement of the provision of the Services.

**Price Schedule** means the schedule of Rates and Fees payable by the Library to the Service Provider for the provision of the Services, as set out in **Schedule 2**.

**Rates** means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Service Provider for the provision of the Services, determined in accordance with the Price Schedule.

**Representative** means the person or persons nominated by the Library and the Service Provider in **Item 2 of Schedule 1** or any other person who is subsequently appointed in accordance with **clause 6.1**.

**Service Levels** means the service levels the Service Provider must comply with in performing its obligations under this Agreement, as specified in **Schedule 3**, and as amended from time to time in accordance with **clause 6.2(c)**.

**Services** means the services to be provided by the Service Provider specified in **Schedule 2**.

**Staff Costs** means Pay as You Go tax, withholding tax, superannuation contributions or charge amounts, fringe benefits tax, workers' compensation insurance premiums, payroll tax and any like taxes and charges arising out of or in relation to this Agreement, or any engagement arising under this Agreement (together with all interest or penalties payable by reference to those costs).

**State** means the Crown in right of the State of Victoria.

**Tender Documentation** means the documentation submitted by the Service Provider in response to a request for tender or request for proposal, in the form finally accepted by the Library, as set out in **Annexure A**.

## **1.2 Interpretation**

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation; and
- (v) "\$", "dollars" or "AUD" is a reference to the lawful currency of the Commonwealth of Australia; and
- (g) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

### **1.3 Headings**

Headings do not affect the interpretation of this Agreement.

## **2 Performance of the Services**

### **2.1 Provision of Services**

The Service Provider must provide the Services for the Library in accordance with the terms of this Agreement.

### **2.2 Commencement and completion**

The Service Provider must commence performance of the Services on the Commencement Date and complete the Services by the Completion Date and in accordance with any other dates for delivery specified in **Schedule 2**. However, for the avoidance of any doubt, this Agreement applies to any Services performed prior to the date of this Agreement.

### **2.3 Service Levels**

The Service Provider must provide the Services to a standard that reaches or exceeds the Service Levels and in accordance with all other requirements set out in **Schedule 2**. In addition, the Service Provider must:

- (a) provide the Services to the reasonable satisfaction of the Library and in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
- (b) ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
- (c) act in good faith and in the best interests of the Library;
- (d) comply with all statements or representations as to its performance or the provision of the Services set out in the Tender Documents; and
- (e) keep the Library informed of all matters of which it ought reasonably be made aware and provide such information in relation to the provision of the Services as may reasonably be required by the Library.



## 2.4 Service Provider to provide equipment

The Service Provider must provide any and all equipment (including computer hardware or software and any ancillary support) necessary for the performance of the Services.

## 2.5 Delay

If the Service Provider is delayed or is likely to be delayed in the supply of the Services in accordance with this Agreement due to any cause beyond its reasonable control, it may make application in writing to the Library's Representative, immediately upon becoming aware of such delay, requesting an extension of the Completion Date. Such request must set out in reasonable detail the circumstances giving rise to such delay, and the likely length of such delay (and provide such other information as the Library's Representative may reasonably request). The Library's Representative may agree to extend the Completion Date if, in the reasonable opinion of the Library's Representative, the circumstances giving rise to the delay are legitimate and warrant an extension of time. The Library's Representative will promptly notify the Service Provider in writing of any agreed revised Completion Date.

## 2.6 Variations

The Library may at any time give written notice to the Service Provider proposing a variation to the scope of the Services (including any necessary extension of the Completion Date). The Service Provider must, within 5 Business Days of such notice, provide a written proposal as to varied Rates or Fees that would apply with respect to the provision of the varied Services (based on the value for money proposition reflected in the then current Price Schedule). The Library may accept such proposal within 5 Business Days of its receipt from the Service Provider. In the absence of such acceptance, the Services must be performed in accordance with this Agreement without such variation.

## 3 Service Provider's staff

- (a) The Services must be performed by the persons specified in **Item 11 of Schedule 1**.
- (b) If the persons identified in **Item 11 of Schedule 1** are unavailable or otherwise unable to provide the Services, the Service Provider must promptly notify the Library of that fact and provide details of alternate, suitably qualified and experienced staff to replace the persons specified in **Item 11 of Schedule 1 (Replacement Staff)**.
- (c) The Library must notify the Service Provider in writing within 2 Business Days as to whether or not it accepts the Replacement Staff proposed by the Service Provider pursuant to **clause 3(b)**. The Service Provider acknowledges and agrees that the Replacement Staff will be provided at no additional charge and that the Library will be under no obligation to accept any person proposed by the Service Provider if the Library is not satisfied as to the qualifications and experience of such person.

## 4 Price for the Services

- (a) The Price Schedule (including the Rates and the Fees) according to which the Service Provider will charge the Library for the Services is set out in **Schedule 2**. Subject to any change in the Rates or Fees for the Services resulting from the application of any express provision of this Agreement, the Rates and Fees are fixed for the term of this Agreement.
- (b) Expenses or other disbursements may only be charged by the Service Provider in accordance with **Schedule 2**.

## 5 Invoicing and payment

### 5.1 Invoicing

- (a) The Service Provider must submit to the Library a tax invoice (or invoices) in respect of the Services as soon as practicable after the completion of the Services, or at such other time or times set out in **Schedule 2** or as otherwise agreed by the parties in writing.
- (b) A tax invoice submitted for payment pursuant to **clause 5.1(a)** must contain each of the matters specified in **Item 4 of Schedule 1** and be sent to the address specified in **Item 4 of Schedule 1**.

### 5.2 Payment of invoice

- (a) Subject to the remainder of this **clause 5.2**, the Library will pay the invoiced amount to the Service Provider within 30 days of receipt of the invoice, in the manner specified in **Item 5 of Schedule 1**.
- (b) An invoice will not be paid until such time as the invoice is certified for payment by the Library's Representative. An invoice will not be certified for payment unless the Library's Representative is satisfied that it is correctly calculated with respect to the Services for which payment is sought and that the Service Provider is entitled to claim payment.
- (c) If the Library's Representative disputes the invoiced amount (whether in whole or in part) for any reason, the Library must pay the undisputed amount of such invoice (if any), and notify the Service Provider of the amount the Library believes is due for payment. If the Library and the Service Provider are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with **clause 19**.
- (d) Payment of an invoice is **not** to be taken as:
  - (i) evidence or an admission that the Services have been provided in accordance with the Service Levels and otherwise in accordance with this Agreement;
  - (ii) evidence of the value of the Services supplied; or
  - (iii) an admission of liability,but must be taken only as payment on account.

### 5.3 Fair Payment

- (a) The Library will, on demand by the Service Provider, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*.
- (b) For the purposes of **clause 5.3(a)**, **overdue amount** means an amount (or part thereof) that:
  - (i) is not, or is no longer, disputed in accordance with this Agreement;
  - (ii) is due and owing under a tax invoice (as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*) properly rendered by the Service Provider in accordance with this Agreement; and
  - (iii) has been outstanding for more than 30 days from the date of receipt of the invoice or the date that the amount ceased to be disputed, as the case may be.

## 6 Contract management

### 6.1 Parties' Representatives

- (a) For the purposes of ensuring a productive and efficient relationship between the Library and the Service Provider, each of the Library and the Service Provider nominates the person or persons specified in **Item 2 of Schedule 1** as their respective representatives (**Representatives**) in relation to all queries, consents, approvals, complaints and disputes required or arising under or in connection with this Agreement.
- (b) The Service Provider will have regard to all requirements of the Library's Representative and will comply with all reasonable directions of the Library's Representative.
- (c) Either party may nominate a replacement Representative by notice in writing to the other party. The appointment of the replacement Representative will be effective from the date on which such notice is given.

### 6.2 Service Levels

- (a) The Service Provider must comply with the Service Levels in the provision of the Services.
- (b) Performance against the Service Levels will be tracked, monitored and reported on in the manner and at the times (if any) set out in **Schedule 3**.
- (c) The Service Levels (or any of them) may only be varied by the written agreement of the parties.

### 6.3 Progress reports

The Service Provider must provide to the Library's Representative:

- (a) progress reports in respect of the Service Provider's performance under this Agreement, such reports to be provided at the times, in the format and containing the matters specified in **Item 6 of Schedule 1**; and
- (b) all other data or information that the Library's Representative may request to enable it to adequately assess the performance of the Service Provider.

## 7 Price review

Where a price review mechanism is set out in **Item 3 of Schedule 1**, the parties will adopt that price review mechanism to agree on revised Rates or Fees for the Services. Any revised Rates or Fees agreed by the parties in accordance with this **clause 7** will take effect from the Review Dates set out in **Item 3 of Schedule 1**.

## 8 Access to records

### 8.1 Service Provider to retain records

The Service Provider must, for a period of seven years after the expiry or termination of this Agreement or completion of the Services (whichever is the earlier), keep true and particular accounts and records of all Services provided under this Agreement and all associated records including all supporting materials used to generate and substantiate invoices submitted in respect of the Services.

### 8.2 Right to access and audit

- (a) The Library or its duly authorised representatives will have the right, after giving reasonable notice at any time during business hours, to inspect and/or audit the accounts and records of the Service Provider relating to the provision of the Services, and of all other matters relevant to the calculation of the Rates and/or Fees. Such representatives will be entitled (at the expense of the Library) to take copies of or extracts from any such records.
- (b) For the avoidance of doubt, the Library will be solely responsible for the costs of conducting any audit under **clause 8.2(a)**.

## 9 Intellectual Property Rights

### 9.1 Warranty and indemnity by Service Provider

The Service Provider warrants to the Library that it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision of the Services.

## 9.2 Ownership of Contract Intellectual Property

- (a) Subject to **clauses 9.3** and **9.4**, all Contract Intellectual Property vests in and is the property of the Library from the time of its creation.
- (b) Subject to **clauses 9.3** and **9.4**, the Service Provider hereby irrevocably and unconditionally assigns to the Library, free of additional charge, all of its right, title and interest in and to the Contract Intellectual Property, and the Service Provider must sign all documents and do all things reasonably required to ensure that such assignment is effected.
- (c) The Service Provider must procure from all of its employees, agents, contractors and other third parties who are authors or makers of any Contract Intellectual Property (and must procure that any contract with any third party for the creation of any Contract Intellectual Property includes a provision that requires such person to obtain from its employees, agents and contractors) a written assignment of all Intellectual Property Rights of the employee, agent, contractor or third party in the Contract Intellectual Property as necessary to give effect to **clauses 9.2(a)** and **(b)** and a written consent from all individuals involved in the creation of any Contract Intellectual Property irrevocably consenting to the Library exercising its rights in the Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.

## 9.3 Ownership of Pre-Existing Intellectual Property

All Pre-Existing Intellectual Property used and identified to the Library by the Service Provider in connection with the provision of the Services or the creation of Contract Intellectual Property remains the property of the Service Provider or its licensors.

## 9.4 Licence of Pre-Existing Intellectual Property

- (a) Subject to **clause 9.4(b)**, the Service Provider hereby irrevocably and unconditionally grants to the Library, free of additional charge, a non-exclusive, worldwide licence to use any Pre-Existing Intellectual Property to the extent that such Pre-Existing Intellectual Property forms part of or is integral to, any works or other items created by the Service Provider in connection with the provision of Services or the creation of Contract Intellectual Property.
- (b) The licence granted to the Library in **clause 9.4(a)** is limited to use of the relevant Pre-Existing Intellectual Property by the Library for the purposes of the Library and for no other purpose.

## 10 Failure to perform

- (a) Without limiting any other clause of this Agreement, or any other remedy the Library may have, if the Service Provider fails to provide or perform any of the Services in accordance with the requirements of this Agreement (including the applicable Service Levels), the Library will not

be required to pay for those Services and may, by notice in writing to the Service Provider, require the Service Provider to:

- (i) remedy any default (if the default is capable of being remedied) at the Service Provider's own expense; or
- (ii) re-perform the Services (if the Services are capable of being re-performed by the Service Provider),

within the time specified in the notice (which must be reasonable having regard to the nature of the Services).

- (b) If the remedied or re-performed Services are remedied or re-performed in accordance with the applicable Service Levels and otherwise to the satisfaction of the Library, then the Library will pay the applicable Rates or Fees for those remedied or re-performed Services (which the parties acknowledge may be less than the cost to the Service Provider of remedying or re-performing the Services).
- (c) If the default referred to in **clause 10(a)** is not capable of being remedied or the Services are not capable of being re-performed, or the Service Provider fails within the time specified to remedy the default or re-perform the Services, the Library may either:
  - (i) remedy that default or re-perform the Services itself; or
  - (ii) have the Services remedied or re-performed by a third party,and in either case, the Service Provider must pay the reasonable costs incurred by the Library in doing so.

## 11 Liability

- (a) The Service Provider must indemnify the Library and its officers, employees and agents (**Indemnified Party**) against any loss, damage, claim, action or expense (including legal expense) which any Indemnified Party suffers as a direct or indirect result of any of the following:
  - (i) a breach of this Agreement by the Service Provider, including any failure to provide the Services in accordance with this Agreement;
  - (ii) any warranty given by the Service Provider under this Agreement being incorrect or misleading in any way; or
  - (iii) any negligent act or failure to act by the Service Provider or any of the Service Provider's employees, agents, officers or sub-contractors,except to the extent that any such loss, damage, claim, action or expense is caused by the negligence or other wrongful act or omission of the Library, its officers or employees.
- (b) If any indemnity payment is made by the Service Provider under this **clause 11**, the Service Provider must also pay to the Indemnified Party

an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.

- (c) If the Service Provider fails to complete the Services by the Completion Date or meet any date for delivery of the Services the Service Provider must pay to the Library any liquidated damages in accordance with the agreed provisions set out in **Item 7 of Schedule 1**. The parties agree that any such liquidated damages constitute a fair and reasonable pre-estimate of the loss that will be suffered by the Library with respect to such failure.

## 12 Warranties

The Service Provider warrants that:

- (a) the provision of the Services will be carried out with all due care and skill and in accordance with all applicable standards, principles and practices;
- (b) it has the accreditation or membership of professional or other bodies in relation to the provision of the Services as set out in the Tender Documentation for the provision of the Services and that it will use its best endeavours to maintain such accreditation or membership during the term of this Agreement;
- (c) it and its employees, agents and contractors are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with the Service Levels;
- (d) whilst on premises owned or controlled by the Library, the Service Provider and its employees, agents and contractors will at all times comply with the Library's lawful directions and policies of which the Service Provider is notified or is otherwise aware, including any applicable occupational health and safety and security policies;
- (e) where the Library has, either expressly or by implication, made known to the Service Provider any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
- (f) the provision of the Services will not infringe any right of any third party (including any intellectual property right) or any Laws; and
- (g) all representations made by the Service Provider in or in connection with the Tender Documentation were and remain accurate and the Service Provider has and will maintain at all relevant times the quality assurance arrangements set out in the Specifications.

## 13 Conflict of Interest

- (a) The Service Provider warrants to the Library that it does not, and will ensure that its employees, agents and contractors do not, hold any office or possess any property, are not engaged in any business, trade or

calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with their duties and interest under this Agreement.

- (b) The Service Provider must promptly inform the Library of any matter which may give rise to an actual or potential conflict of interest.
- (c) The Service Provider acknowledges and agrees that failure to comply with this **clause 13** will constitute a breach of a fundamental term of this Agreement.

## 14 Change in Control

- (a) The Service Provider must notify the Library in writing of any impending change in Control of the Service Provider (or of the ultimate holding company of the Service Provider) of which it becomes aware.
- (b) In determining whether or not to provide its consent to a change in Control, the Library may consider such information as it considers relevant or necessary, including:
  - (i) compliance by the proposed owner with Governmental policies including in relating to ethical employment standards;
  - (ii) insurance coverage maintained by the proposed owner;
  - (iii) the financial viability of the proposed owner; and
  - (iv) the likely ability of the proposed owner to satisfy the requirements set out in the Tender Documentation, and the obligations of the Service Provider under the Agreement.
- (c) If the Library notifies the Service Provider that it does not consent to the proposed change in Control or consent is not sought, and the change in Control occurs notwithstanding, the Library may, by notice in writing to the Service Provider, terminate this Agreement, such termination to take effect at any nominated time within the immediately succeeding 12 months.

## 15 Termination

### 15.1 Grounds for termination by the Library

The Library may terminate this Agreement by notice in writing to the Service Provider if:

- (a) the Service Provider fails to provide the Services in accordance with the Service Levels or otherwise in accordance with the requirements of this Agreement;
- (b) the Service Provider fails to remedy, to the satisfaction of the Library, any breach of this Agreement (which in the reasonable opinion of the Library is able to be remedied) within 14 days after the date on which the



Library issues the Service Provider a written notice requiring the Service Provider to remedy the breach;

- (c) the Service Provider breaches any material provision of this Agreement and in the reasonable opinion of the Library such breach cannot be remedied;
- (d) the Service Provider or any of its employees, agents or sub-contractors are guilty of fraud, dishonesty or any other serious misconduct;
- (e) the Service Provider commits any act or does any thing that is contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Service Provider into disrepute and as a consequence the Library believes that its continued association with the Service Provider will be prejudicial or otherwise detrimental to the reputation of the State; or
- (f) the Service Provider:
  - (i) being a partnership, company or other composite body undergoes a change in its structure which, in the reasonable opinion of the Library, limits the capacity of the Service Provider to provide the Services or otherwise preclude or adversely affect the Service Provider's ability to carry out its obligations and duties under this Agreement; or
  - (ii) goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors.

## **15.2 Termination without cause**

The Library may terminate this Agreement without cause by giving the Service Provider 24 hours notice in writing.

## **15.3 Grounds for termination by the Service Provider**

The Service Provider may immediately terminate this Agreement by notice in writing to the Library if:

- (a) the Library fails to remedy, to the satisfaction of the Service Provider, any breach of this Agreement (which in the reasonable opinion of the Service Provider is able to be remedied) within 14 days after the date on which the Service Provider issues the Library with a written notice requiring the Library to remedy the breach; or
- (b) the Library breaches any material provision of this Agreement and in the reasonable opinion of the Service Provider such breach cannot be remedied.

## **15.4 Consequences of termination**

- (a) Termination of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination.

- (b) Where this Agreement is terminated by the Library pursuant to **clause 15.2**:
  - (i) the Service Provider must cease all work under this Agreement as soon as practicable following receipt and take all appropriate action to mitigate any loss and prevent additional costs being incurred; and
  - (ii) the Library will pay to the Service Provider all amounts owing in respect of the Services undertaken, and work in progress as at the date of termination, provided that such Services or work in progress have, in the reasonable opinion of the Purchaser, been performed in accordance with the Service Levels and the requirements of this Agreement.

## **15.5 Survival**

**Clauses 8, 9, 11, 12, 15.4, 18 and 19** of this Agreement survive the termination or expiry of this Agreement or the completion of the Services and may be enforced at any time.

## **16 Insurance**

### **16.1 Service Provider to maintain insurance**

- (a) The Service Provider must (and must ensure that any sub-contractors appointed by it under **clause 21**) obtain and maintain the insurances specified in **Item 8 of Schedule 1**.
- (b) On request, the Service Provider must provide the Library with evidence of the currency of any insurance it is required to obtain.
- (c) Where any insurance the Service Provider is required to obtain and maintain expires (**Initial Insurance**), the Service Provider must provide the Library with evidence of the currency of relevant replacement insurance prior to the expiration of the Initial Insurance.
- (d) Any insurance obtained pursuant to **clause 16.1(a) or (c)** must be:
  - (i) taken out with an insurer acceptable to the Library; and
  - (ii) on terms (including any excess) which are acceptable to the Library.

### **16.2 Cross Liability**

In addition to the requirements of **clause 16.1(d)**, any insurance that the Service Provider is required to obtain and maintain under this Agreement must:

- (a) be in the joint names of the Service Provider and the Library; and
- (b) include a cross liability clause under which the insurer agrees to waive all rights of subrogation or action against any of the persons named in the relevant insurance policy as the “insured” and for the purpose of which the insurer accepts the term “insured” as applying to each of the persons

so named as if a separate policy of insurance had been issued to each of them.

## 17 Accident Compensation

The Service Provider must ensure that, in respect of its employees and contractors and any other persons engaged by the Service Provider to provide the Services, it:

- (a) complies with the provisions of the *Accident Compensation Act 1985* (Vic);
- (b) insures against its liability to pay compensation whether under legislation or otherwise; and
- (c) produces to the Library on request any certificates or like documentation required by the *Accident Compensation Act 1985* (Vic).

## 18 Confidentiality and privacy

### 18.1 Use of Confidential Information

- (a) The Service Provider will (and will ensure that its employees, agents and advisers will):
  - (i) use and reproduce Confidential Information only to perform its obligations under this Agreement; and
  - (ii) not disclose or otherwise make available Confidential Information other than to personnel who have a need to know the information to enable the Service Provider to perform its obligations under this Agreement.
- (b) All Confidential Information will remain the property of the Library and all copies or other records containing the Confidential Information (or any part of it) must be returned by the Service Provider to the Library on termination or expiry of this Agreement.
- (c) The Service Provider acknowledges that the Library will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Service Provider of this clause and without the need on the part of the Library to prove any special damage.
- (d) The Library's Representative may require all of the Service Provider's staff or any other person to whom Confidential Information will be disclosed to execute a deed of confidentiality in the form reasonably required by the Library's Representative.

### 18.2 Disclosure of Service Provider's information

- (a) Subject to **clause 18.2(b)**, the Library agrees to treat as confidential all information of or relating to the Service Provider that is provided to it,

whether under this Agreement or the Tender Documentation, by or on behalf of the Service Provider.

- (b) The Service Provider hereby acknowledges and/or consents to:
- (i) the Library publishing (on the Victorian Government Purchasing Board website) certain particulars of this Agreement including the name of the Service Provider and the contract value together with the conditions of this Agreement generally;
  - (ii) the Library providing information in relation to the pricing of goods under this Agreement to other Governmental Agencies (of the State or Commonwealth) for the purpose of comparison;
  - (iii) the Library making available to the Victorian Auditor-General all information that is requested by the Auditor-General; and
  - (iv) the Library making available all information in relation to the Service Provider or this Agreement as may be required to comply with its obligations under the *Freedom of Information Act 1982* (Vic).

### **18.3 Privacy**

The Service Provider acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Service Provider under or in connection with this Agreement in the same way and to the same extent as the State or the Library would have been bound had it been directly done or engaged in by the State or the Library.

## **19 Disputes**

### **19.1 Parties to meet**

If any dispute arises under or in connection with this Agreement (**Dispute**) which Dispute is not able to be resolved by the parties' Representatives within 14 days of such Dispute arising, the nominated senior executive officer (or equivalent) of each of the Library (on the one hand) and the Service Provider (on the other hand) will promptly meet and discuss in good faith with a view to resolving such Dispute.

### **19.2 Mediation**

- (a) If any Dispute is unable to be resolved in accordance with **clause 19.1** within 14 days, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation.
- (b) The mediation will be conducted in accordance with the mediation guidelines of ACDC (**Guidelines**) which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in this Agreement.

### **19.3 Arbitration or litigation**

- (a) If the parties fail to settle any Dispute in accordance with **clause 19.2**, the parties may agree to submit the Dispute for resolution to final and binding arbitration under the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules.
- (b) If the parties do not agree to refer the dispute to arbitration in accordance with **clause 19.3(a)**, either party may submit the dispute for resolution to the non exclusive jurisdiction of the Courts of Victoria, Australia.

### **19.4 Performance during dispute resolution**

The parties to a Dispute will continue to perform their respective obligations under this Agreement pending the resolution of the Dispute under this **clause 19**.

### **19.5 Interlocutory relief**

Nothing in this **clause 19** is to be taken as preventing any party to a dispute from seeking interlocutory relief in respect of such dispute.

## **20 Compliance with Law**

The Service Provider must, in performing its obligations under this Agreement, comply with all Laws affecting or applicable to the provision of Services by the Service Provider under this Agreement. Without limitation to the foregoing, the Service Provider must comply with the provisions set out in **Schedule 4**.

## **21 Sub-contracting**

- (a) Except as expressly provided in this Agreement, the Service Provider must not sub-contract to any third person any of its obligations under this Agreement without the prior written consent of the Library, which consent may be given or withheld by the Library in its absolute discretion.
- (b) The Service Provider must ensure that any person engaged by it complies with all obligations imposed on the Service Provider by this Agreement. The Service Provider will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Service Provider itself.

## **22 Safety and security**

### **22.1 Access to premises**

If the Service Provider requires access to the premises of the Library in connection with the provision of the Services, the Library will, subject to its usual security requirements, permit the Service Provider reasonable access to

the premises at such times as may be reasonably necessary to enable the Service Provider to provide the Services.

## **22.2 Obligations**

When the Service Provider enters the premises of the Library, the Service Provider must and must ensure that its employees, agents and contractors use all reasonable endeavours to:

- (a) protect people and property;
- (b) prevent nuisance and unnecessary noise and disturbance;
- (c) act in a safe and lawful manner and comply with the safety standards and policies of the Library (as notified to the Service Provider); and
- (d) comply with the *Occupational Health and Safety Act 2004 (Vic)* and any applicable regulations made under that Act.

## **22.3 Security**

- (a) The Service Provider must comply with any specific security requirements identified by the Library's Representative.
- (b) The Service Provider must ensure that each of its officers, employees and agents who will be engaged in the provision of the Services, or who may gain access to information relating to the Services, consent in writing to the Library conducting appropriate security checks in relation to each of them including appropriate police records checks (if requested by the Library's Representative).
- (c) The Library's Representative may give directions to the Service Provider regarding specific confidentiality and security requirements for the purposes of this Agreement and the Service Provider must comply with all such reasonable directions.

## **23 GST**

### **23.1 Definitions**

Terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

### **23.2 Consideration is inclusive of GST**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are inclusive of GST. The recipient's obligation to pay the GST component of the consideration is subject to it receiving a valid tax invoice in respect of the supply at or before the time of payment.

### **23.3 Reimbursement**

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the

first party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.

## 24 Staff Costs

- (a) The Service Provider will indemnify and keep indemnified the Library from and against all liability for the Staff Costs in any way relating to the Services.
- (b) If the Library is or becomes liable to pay any Staff Costs, the Library may deduct the amount of its liability for the Staff Costs from any amount due by the Library to the Service Provider, whether under this Agreement or otherwise.

## 25 Notices

### 25.1 Giving a communication

A notice, demand, certification, process or other communication relating to this Agreement must be in writing in the English language, and may (in addition to any other method permitted by law) be sent by pre-paid post, pre-paid courier or by electronic mail as follows:

- (a) to the Library: at the address which is set out in **Item 9 of Schedule 1**; and
- (b) to the Service Provider: at the address which is set out in **Item 9 of Schedule 1**.

### 25.2 Time of delivery

A notice or document shall be taken to be delivered or served as follows:

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post, two Business Days after the date of posting;
- (c) in the case of facsimile transmission, on receipt by the sender of a transmission report from the despatching machine showing: the date of transmission, the relevant number of pages, the correct telephone number of the destination facsimile machine and the result of the transmission as satisfactory; and
- (d) in the case of electronic mail, if the receiving party has agreed to receipt in that form under the Agreement and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), and acknowledgment of receipt is recorded on the sender's computer.

### 25.3 After hours communications

If any notice or document is delivered or deemed to be delivered:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

## **26 General**

### **26.1 Legal costs**

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

### **26.2 Amendment**

This Agreement may only be varied or replaced by a document executed by the parties.

### **26.3 Waiver and exercise of rights**

- (a) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right by the first party.

### **26.4 Severability**

Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision shall, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

### **26.5 Rights cumulative**

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

### **26.6 Set off**

The Library may set off against any sum owing to the Service Provider under this Agreement any amount then owing by the Service Provider to the Library.

### **26.7 Time of the essence**

Time is of the essence in relation to the provision of the Services under this Agreement.



## **26.8 Governing law and jurisdiction**

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## **26.9 Assignment of rights**

- (a) A party may assign any right under this Agreement with the prior written consent of the other party.
- (b) The Service Provider will not, as a result of any assignment pursuant to **clause 26.9(a)**, be relieved from the performance of any obligation under this Agreement, and will be responsible for acts and omissions of any assignee.
- (c) The Library may, by notice in writing to the Service Provider, assign its rights to any State government department, administrative office or other entity in the event of any State government restructure or other re-organisation.

## **26.10 Counterparts**

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

## **26.11 Entire understanding**

- (a) This Agreement, together with:
  - (i) the Tender Documentation; and
  - (ii) any other documents or representations specified in **Item 10 of Schedule 1**,contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) Except as otherwise provided in **clause 26.11(a)**:
  - (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect; and
  - (ii) no oral explanation or information provided by any party to another:
    - (A) affects the meaning or interpretation of this Agreement; or
    - (B) constitutes any collateral agreement, warranty or understanding between any of the parties.

**26.12 Relationship of parties**

The Service Provider is engaged as an independent contractor and nothing in this Agreement will be deemed to constitute the Service Provider as an agent or employee of the Library and the Service Provider will not have any authority to incur and will not incur any obligation or make or purport to make any representation on behalf of the Library except with the express written instructions of the Library.

**26.13 Disclaimer and acknowledgments**

- (a) The Library gives no warranty as to the accuracy and accepts no liability for any inaccuracy or omission, in any information provided by the Library to the Service Provider by way of a request for tender, a request for a proposal or otherwise.
- (b) No representation made by or on behalf of the Library shall be binding upon the Library unless incorporated into this Agreement.

# Schedule 1

## Contract Variables

### Item 1: Commencement and completion (Clause 2.1)

Commencement Date:

Completion Date:

### Item 2: Library and Service Provider Representatives (Clause 6.1)

#### **Library's Representative**

Name:

Title:

Telephone:

Mobile:

Email:

#### **Service Provider's Representative**

Name:

Title:

Telephone:

Mobile:

Email:

### Item 3: Price review (Clause 7)

---

**Review Mechanism:**

***[Insert appropriate review mechanism (eg. increase or decrease in Rates or Fees for Services by reference to relevant industry specific index, etc.)]***

**Review Dates:**

***[Insert timing for revised prices to take effect (eg. anniversary of commencement / 6 monthly, etc.)]***

### Item 4: Invoicing (Clause 5)

---

**Invoice requirements:**

Invoices must contain the information necessary to be a tax invoice for the purposes of the *A New Tax System (Services and Services Tax) Act 1999* (Cth) in addition to the following:

The Service Provider's Australian Business Number

The amount due to the Service Provider and the basis for its calculation

The amount of any GST applying to the Fees

The date of delivery of the Services to which the invoice relates

A description (including quantity) of the Services delivered

The Service Provider's address for payment

The Library's reference number.

***[Further invoice requirements to be inserted]***

**Address for invoice:**

### Item 5: Payment (Clause 5)

---

Payment for Services is to be made in accordance with any of the following methods:

***[Insert appropriate method of payment (eg Corporate Transaction Card, cheque, transfer of funds, etc.)]***

**Item 6: Progress report (Clause 6.3)**

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**Item 7: Liquidated Damages (Clause 11)**

---

**Item 8: Insurance (Clause 16.1)**

---

Tick one or more of the boxes below to specify the types and amount of insurance that the Service Provider is required to obtain and maintain during the Term:

	<b>Type of coverage</b>	<b>Amount (AUD)</b>
<input type="checkbox"/>	Professional indemnity insurance	<i>[Insert]</i>
<input type="checkbox"/>	Public liability insurance	<i>[Insert]</i>
<input type="checkbox"/>	Other (please specify)	<i>[Insert]</i>

Each policy must continue to apply for a period of six years after the later of the Completion Date or the termination of this Agreement.

Please specify below details of any further conditions attaching to such insurance coverage (e.g. run-off insurance, etc.)

.....  
.....

**Item 9: Notice particulars (Clause 25)**

---

**Library**

Address:

Fax:

Email:

Addressee:

**Service Provider**

Address:

Fax:

Email:

Addressee:

### Item 10: Documentation (Clause 26.10)

---

Insert details of any additional documentation (other than the Tender Documentation) that forms part of this Agreement:

**[insert]**

### Item 11: Service Provider's staff (Clause 3)

---

Insert details of Service Provider's employees or contractors who will be engaged in the provision of the Services:

# Schedule 2

## Services and Price Schedule

### 1 Services

***Services may be described in detail or referred to as those services set out in the Request for Tender including the Project Brief (if any) and the Tender, which documents should be incorporated into this Schedule. It is recommended that at least the Project Brief be incorporated and the documents may be incorporated by reference. A pro forma provision for incorporation follows:***

The Services are also described in the following documents (which documents are hereby incorporated into this Agreement) namely:

- (a) the Request for Tenders and Project Brief for [ ] dated [ ] issued by the Library;
- (b) the Service Provider's Tender dated [ ] [Tender Documentation];
- (c) any published specifications and other representations (including advertised claims) of the Service Provider and in relation to the Services; and
- (d) the following documents which modify the original specifications **[insert details of documents]**.

In interpreting the documents which describe the Services, the following order of precedence will apply to the extent of any inconsistency:

- (a) The Agreement;
- (b) The Schedules;
- (c) The Request for Tenders;
- (d) The Tender Documentation.

#### **Work program**

[Set out delivery dates or milestones to be achieved.]

### 2 Price Schedule

**[Insert details of Rates and Fees]**

***[Insert details of the Services to be provided, the Price Schedule and details regarding liability for expenses and disbursements incurred by the Service Provider.***

# Schedule 3

## Service Levels

In providing the Services and otherwise performing its obligations under the Agreement, the Service Provider must comply with the following Service Levels:

***[to be inserted, together with applicable measurement periods and categories (including performance scorecard measures, customer satisfaction surveys, etc.)]***



# Schedule 4

## Compliance with Law

In performing its obligations under this Agreement, the Service Provider must comply with the following (without limiting any of its other obligations under this Agreement):

### **1 Employment Policy**

- (a) The Service Provider must comply with Anti-Discrimination Law.
- (b) The Service Provider and any person engaged in the provision of the Services must not:
  - (i) engage in unethical work practices; or
  - (ii) engage employees or sub-contracted workers upon terms and conditions which do not meet industry standards generally applicable in Victoria.
- (c) Where a federal industrial award may apply to the capacity in which an employee is engaged by the Service Provider, or by a sub-contractor, in the provision of the Services, the conditions on which that employee is engaged shall be no less beneficial to the employee than the rates and conditions under that award.

### **2 Ethical Purchasing Policy**

- 2.1 Without limiting or derogating from the Service Provider's obligation to comply with any Law, the Service Provider must satisfy the Ethical Employment Standard at all times.
- 2.2 The Library may make an Adverse Assessment if, at any time during the term of the Agreement:
  - (a) a court, tribunal, commission or board makes a finding of serious breach of an Applicable Industrial Instrument against the Service Provider or convicts the Service Provider of a serious offence under Applicable Legislation; or
  - (b) a court, tribunal, commission or board makes a finding of a breach of an Applicable Industrial Instrument against the Service Provider or convicts the Service Provider of an offence under Applicable Legislation that is part of a pattern of repeated or ongoing breaches or offences; or
  - (c) the Service Provider fails to meet its disclosure obligations under **paragraph 2.3**.
- 2.3 The Service Provider must, on request by the Library and within the time period required by the Library in writing (which must not be less than 30 days) provide an up-to-date Ethical Employment Statement setting out Full Details of:

- (a) any adverse finding against the Service Provider by a court, tribunal, commission or board in respect of a breach of an Applicable Industrial Instrument;
- (b) any conviction by a court, tribunal, commission or board of an offence committed by the Service Provider under Applicable Legislation;
- (c) any finding by a court, tribunal, commission or board that the Supplier has breached a penalty provision of Applicable Legislation; and
- (d) any proceeding or prosecution against the Service Provider in respect of a breach of an Applicable Industrial Instrument or an offence under or breach of Applicable Legislation commenced since the date of this Agreement that has not previously been disclosed to the Library.

The up-to-date Ethical Employment Statement may, at the option of the Service Provider, also include details of remedial measures implemented to ensure future compliance with Applicable Industrial Instruments and Legislation.

2.4 The parties acknowledge and agree that:

- (a) if this Agreement is terminated pursuant to **paragraph 2.9**, the Service Provider's name and details (including its Australian Business Number) will be included in the Ethical Employment Reference Register for a period of 24 months from the date that termination takes effect;
- (b) the Victorian Government departments will access the Ethical Employment Reference Register for the purpose of applying the Ethical Purchasing Policy; and
- (c) the inclusion of any details in the Ethical Employment Reference Register is one factor in the assessment process of whether a tenderer satisfies the Ethical Employment Standard, and will not automatically exclude the Service Provider from participation in future tender processes.

2.5 In connection with the requirements of the Ethical Purchasing Policy, the Service Provider will:

- (a) permit an accountant or auditor on behalf of the Library from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Service Provider for the purposes of this Agreement; and
- (b) give such accountant or auditor all reasonable assistance to facilitate the conduct of such audit or inspection.

Any information provided, or to which an accountant or auditor has access under this clause, shall be treated as confidential information and shall not be used other than for the purposes of this Agreement or disclosed other than as required at law or to meet any requirements of the Parliament of Victoria.

2.6 The confidentiality obligations of the parties shall not extend to:

- (a) information already in the public domain other than due to a breach of this Agreement;
  - (b) any disclosure required by Law;
  - (c) any disclosure reasonably required in order to comply with a request for information made by the Auditor-General of Victoria; or
  - (d) information reasonably required in order to publish appropriate and comprehensive performance data relating to the provision of the Services under this Agreement.
- 2.7 Notwithstanding any other obligation in this Agreement, the Service Provider acknowledges that the Library (or such Victorian Government department as may be charged with the responsibility of monitoring compliance with the Ethical Purchasing Policy from time to time) may publish (whether on the internet or otherwise) the name of the Service Provider and the value of the Services to be provided under this Agreement, together with the conditions of this Agreement generally.
- 2.8 If at any time during the term of the Agreement, the Library notifies the Service Provider in writing that it has made an Adverse Assessment pursuant to **paragraph 2.2**, the Service Provider must, within 14 days of receipt of such notice, or such longer period agreed by the Library, provide a statutory declaration from a director or company secretary of the Service Provider, setting out:
- (a) any additional information that in the opinion of the Service Provider is relevant to the Adverse Assessment, including the Service Provider's grounds for any objection to the Adverse Assessment;
  - (b) details of any information on which the Adverse Assessment is based that in the opinion of the Service Provider is incorrect, incomplete or otherwise unfairly prejudicial to the Service Provider; and
  - (c) any existing or planned remedial measures that the Service Provider has taken or will be taking to prevent a breach or offence similar to the breach or offence on which the Adverse Assessment is based from recurring.
- 2.9 Following receipt of the statutory declaration or expiration of the period described in **paragraph 2.8**, whichever comes first, the Library may, in its discretion, do one or more of the following:
- (a) request the Service Provider show cause as to why this Agreement should not be suspended or terminated with effect from 14 days; and/or
  - (b) suspend the operation of this Agreement for a specified period of up to 6 months with 14 days notice; and/or
  - (c) terminate this Agreement with 14 days notice.
- 2.10 In exercising its discretion under **paragraph 2.9**, the Library will take into consideration:

- (a) whether the Service Provider has taken or will take measures that, in the reasonable opinion of the Library, are commensurate with the breach or the offence on which the Adverse Assessment is based and can be reasonably expected to prevent such breach or offence from recurring; or
- (b) whether the Library is otherwise satisfied that the Service Provider has shown good cause why the Agreement should not be suspended or terminated.

2.11 The remedies under **paragraph 2.9** are in addition to and do not limit any other rights or remedies of the Library under this Agreement or otherwise at Law.

2.12 In this **paragraph 2**:

**Adverse Assessment** means an assessment by the Library pursuant to the Ethical Purchasing Policy that, in the opinion of the Library, the Service Provider does not satisfy the Ethical Employment Standard.

**AFPCS** means that Australian Fair Pay and Conditions Standard within the meaning of the *Workplace Relations Act 1996* (Cth).

**Applicable Industrial Instruments** means an Award, Enterprise Agreement or AFPCS that applies to the employment of any of the employees of the Service Provider and is binding on the Service Provider.

**Applicable Industrial Instruments and Legislation** means all Applicable Industrial Instruments and all Applicable Legislation.

**Applicable Legislation** means:

- (a) *Federal Awards (Uniform System) Act 2003* (Vic);
- (b) *Outworkers (Improved Protection) Act 2003* (Vic);
- (c) *Dangerous Goods Act 1985* (Vic);
- (d) *Equipment (Public Safety) Act 1994* (Vic);
- (e) *Occupational Health and Safety Act 2004* (Vic);
- (f) *Workplace Relations Act 1996* (Cth);
- (g) *Long Service Leave Act 1992* (Vic);
- (h) Anti-Discrimination Laws;
- (i) any corresponding State (other than Victoria) or territory legislation dealing with any of the matters dealt with in paragraphs (a) to (h) above; and
- (j) any other legislation designated by the Victorian Government as Applicable Legislation under the Ethical Purchasing Policy from time to time.

**Anti-Discrimination Law** means the *Equal Opportunity for Women in the Workplace Act 1999* (Cth), the *Equal Opportunity Act 1995* (Vic), the *Disability Discrimination Act 1992* (Cth), the *Sex Discrimination Act 1984* (Cth), the *Racial Discrimination Act 1975* (Cth), the *Age Discrimination Act 2004* (Cth) and the *Workplace Relations Act 1996* (Cth).

**Award** means any award within the meaning of the *Workplace Relations Act 1996* (Cth) or of any tribunal empowered to make industrial awards applying to the employment of employees.

**Enterprise Agreement** means any Workplace Agreement, Pre-reform Certified Agreement, pre-reform AWA, Preserved State Agreement, Notional Agreement Preserving a State Award (as these terms are defined in the *Workplace Relations Act 1996* (Cth)) or any agreement made, lodged or registered under a law of a State.

**Ethical Employment Reference Register** has the meaning given to that term in the Ethical Purchasing Policy.

**Ethical Employment Standard** means, in the context of this Agreement, the requirement for the Service Provider to demonstrate, to the reasonable satisfaction of the Library, and in accordance with the requirements of the Ethical Purchasing Policy, that the Service Provider has, and will continue during the term of the Agreement, to meet its obligations to its employees under Applicable Industrial Instruments and Legislation.

**Ethical Employment Statement** has the meaning given to that term in the Ethical Purchasing Policy.

**Ethical Purchasing Policy** means the Victorian Government's Ethical Purchasing Policy supporting fair and safe workplaces, which is published by the Victorian Government, as amended from time to time.

**Full details** means details of:

- (a) the nature of the breach or offence or alleged breach or offence;
- (b) any conviction recorded or adverse finding made in respect of the breach or offence;
- (c) any penalty or orders imposed by a court, tribunal, commission or board in respect of the breach or offence and the maximum penalty that could have been imposed under the Applicable Industrial Instruments and Legislation;
- (d) the name of the court, tribunal, commission or board, the State or Territory in which the proceeding or prosecution is brought, the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, commission or board;
- (e) the name of the entity against which the finding or conviction was made or the proceeding or prosecution was initiated;
- (f) this Agreement; and
- (g) any further information regarding the matters set out in paragraphs (a) – (f) above that may be requested by the Library.

### **3 VIPP Compliance**

3.1 The Service Provider acknowledges that:

- (a) information contained in the VIPP Statement and information regarding the Service Provider's compliance with the VIPP Statement may be provided to the Department of IIR for inclusion on the register; and
- (b) such information will be made available to departments and agencies of the Victorian Government for the purposes of assessing other tender proposals for VIPP purposes.

3.2 The Department of IIR will monitor the Service Provider's compliance with the VIPP Statement, measured against the VIPP outcomes set out in the Tender Documentation. The Service Provider acknowledges that to facilitate this monitoring process, an auditor or other nominated representative of the Department of IIR will be entitled to have access to, and to obtain information from, the Service Provider's records and staff, and the Service Provider hereby authorises the Department of IIR to obtain information from the persons, firms or corporations nominated in the Tender Documentation as to the Service Provider's compliance with the VIPP Statement. In assessing the Service Provider's compliance with the VIPP Statement, the Department of IIR's auditor or other representative will exercise his or her reasonable discretion, and will take into account any issue raised by the Service Provider which fairly represents a cause of failure to comply with the VIPP Statement that is beyond the Service Provider's reasonable control.

3.3 In this **paragraph 3**:

**Department of IIR** means the Department of Innovation, Industry and Regional Development or such other department of the Victorian government as may be responsible for monitoring compliance with the VIPP from time to time.

**VIPP** means the Victorian Industry Participation Policy issued by the Victorian government, as amended from time to time.

**VIPP Statement** means the statement submitted by the Service Provider to the Library in connection with the tender evaluation process conducted prior to the entry into this Agreement.

**Executed** as an agreement.

Signed by [*name*] for and on behalf of )  
the **Library Board of Victoria** in the )  
presence of: )  
)

.....  
Witness

.....  
Name of Witness (print)

**Where the Service Provider is a company incorporated in Australia:**

**Executed** by [#] )  
)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

**Where the Service Provider is an individual:**

**Signed** by [*Insert*] in the presence of: )  
)

.....  
Witness

.....  
Name of Witness (print)

# Annexure A

## Request for Proposal Documentation