



Master Digitisation Services Agreement

THE LIBRARY COUNCIL OF NEW
SOUTH WALES

And

[INSERT CONTRACTOR'S DETAILS]

Table of contents

Operative part	5
1 Panel arrangement	5
1.1 Multi-agency access contract and Eligible Agencies	5
1.2 No commitment	5
1.3 Obligation to supply	5
1.4 Non-exclusivity	5
1.5 Panel Members	5
1.6 Panel Member meetings and reports	5
2 Agreement	6
2.1 Term of the agreement	6
2.2 Scope of the agreement	6
3 Representatives	6
3.1 The Principal's Representative under this agreement	6
3.2 The Customer's Representative under a Purchase Order	6
3.3 Contractor's Representative under this agreement and any Purchase Order	6
4 Ordering Services	6
4.1 Ordering Period	6
4.2 Template Purchase Orders	7
4.3 Quotes	7
4.4 Purchase Orders	7
4.5 Separate contracts	8
5 Performance of the Services	8
5.1 The Services	8
5.2 Specified personnel	8
5.3 Customer's requirements	9
6 Collections' Materials	9
6.1 Contractor's acknowledgement and warranty	9
6.2 Licence	9
6.3 Contractor's obligations	9
6.4 Delivery and risk	10
6.5 Deletion or destruction of copies of the Deliverables	10
7 Standard of Services	10
7.1 Service Levels	10
7.2 Rejection and rectification of Defects	11
7.3 Time of the essence	11
7.4 Customer reports and meetings	11
7.5 Subcontracting	12
7.6 Delays	12
7.7 Variations	12
8 Contractor's obligations	13
8.1 Safety	13
8.2 Damage	13
8.3 Compliance with policies and procedures	13
8.4 Contractor's warranty	13
9 The Customer' obligations	14
10 Fee	14
10.1 Payment of the Fee	14
10.2 Deferral of payment	14
10.3 Invoices	14
10.4 Payment disputes	14
11 Audit	15
11.1 Records and retention	15
11.2 Audit rights	15

12	Dispute resolution	15
13	Publicity	16
13.1	Use of names	16
13.2	Publicity	16
14	Intellectual Property	16
15	Copyright Status	17
16	Confidential Information	17
17	Privacy obligations	18
18	Access to Information (GIPA Act, s. 121)	18
18.1	Effect of GIPA on this agreement	18
18.2	Access to Information	18
18.3	Consultation Clause (GIPA Act, s. 54)	19
19	Insurance	19
20	Termination	20
20.1	Termination for convenience	20
20.2	Financial consequences of termination for convenience	20
20.3	Termination of agreement for cause	20
20.4	Termination of Purchase Orders	21
20.5	After termination	21
20.6	Survival	21
21	Representations and warranties	21
21.1	General warranties	21
21.2	Continuing warranties	22
22	Indemnity	22
23	Costs, taxes and GST	22
23.1	Costs	22
23.2	Taxes	22
23.3	GST	22
24	Notices	23
24.1	Service of notices	23
24.2	Receipt of notices	23
25	General	23
25.1	Negation of agency	23
25.2	Applicable law	23
25.3	Waiver	23
25.4	Variation	24
25.5	Assignment and novation	24
25.6	Severability	24
25.7	Entire agreement	24
25.8	Counterparts	24
26	Definitions and interpretation	24
26.1	Interpretations	24
26.2	Definitions	25
Schedule 1 Master Digitisation Services Agreement: Details		31
Schedule 2 Statement of Requirements		33
Schedule 3 Template Purchase Order		34
1	Customer's Representative	34
1.1	The Customer's Representative is:	34
1.2	The Customer's address for service of notices:	34
2	Period of Purchase Order	34
2.1	Start Date (clause 4.2(d))	34
2.2	Service Period (clause 4.2(e))	34
3	Specified Personnel	35
4	Collections' Materials	35
4.1	Description:	35
4.2	Inventory [e.g.:	35
4.3	Collection Viewing Date and Time:	35

4.4	Conditions or restrictions on use of the Collections Materials (clause 6.2(c)):	35
4.5	Handling and preservation:	35
4.6	Transportation of Collections' Materials:	35
5	Delivery and return of the Collections' Materials.....	35
5.1	Delivery method:	35
5.2	Condition reports on delivery:	35
5.3	Return of Collections' Materials to the Principal:	35
5.4	Condition reports on return:	35
6	Customer's obligations (clause 9).....	35
6.1	Facilities:	35
6.2	[Other]:	35
7	General Services requirements	35
7.1	Project management:	35
7.2	Reports and Meetings"	35
7.3	Location	36
7.4	Statement of Requirements	36
7.5	Insurance	36
7.6	Privacy Management Plan	36
7.7	Training	36
8	Services and Deliverables	36
8.1	Scope of Services	36
8.2	Deliverables	36
9	Services Standards/Specifications.....	37
10	Schedule for the delivery of services.....	37
10.1	Project schedule	37
11	Service Levels.....	37
12	Fees and payment terms	37
13	Additional terms and conditions specific to this Purchase Order.....	38
13.1	Order of Precedence	38
	Master Digitisation Services Agreement signing page	39

Master Digitisation Services Agreement

Date ► [INSERT DATE WHEN SIGNED BY BOTH PARTIES]

Between the parties

Principal **THE LIBRARY COUNCIL OF NEW SOUTH WALES** of
Macquarie Street, Sydney NSW 2000, ABN 19 665 924 697
for and on behalf of the Eligible Agencies

Contractor **[Insert Contractor details, ABN, address]**

Recitals

- 1 The Principal and the Eligible Agencies wish to purchase various digitisation services from time to time.
- 2 The Contractor has represented that it has the skills, qualifications, resources and experience necessary to provide the Services on the terms of this agreement.
- 3 In reliance on those representations, the Principal and the Contractor have agreed the terms set out in this agreement on which the Contractor will supply Services to the Principal and the Eligible Agencies under Purchase Orders established from time to time under this agreement.

The parties agree as set out in the Operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

Operative part

1 Panel arrangement

1.1 Multi-agency access contract and Eligible Agencies

This agreement is a multi-agency access contract under the *NSW Procurement Policy Framework (2015)* under which the Principal and any Eligible Agencies may from time to time procure Services under separate contracts (Purchase Orders) established under this agreement using the procedures in clause 4.

1.2 No commitment

The Principal or an Eligible Agency is not obliged:

- (a) to agree any Purchase Orders with the Contractor; or
- (b) to agree any Purchase Orders for any minimum quantity of services or deliverables.

1.3 Obligation to supply

The Contractor is not obliged to supply and the Principal or any Eligible Agency is not obliged to acquire, any services under this agreement unless and until a Purchase Order has been executed for those services.

1.4 Non-exclusivity

- (a) The Contractor acknowledges that this agreement does not create an exclusive supply arrangement between the Contractor and the Principal or any Eligible Agency.
- (b) The Principal or any Eligible Agency may, at any time, select another Contractor to supply services that are the same as, or substantially similar to Services supplied by the Contractor.

1.5 Panel Members

- (a) The Contractor acknowledges that it is a Panel Member.
- (b) The Contractor acknowledges that the Panel Member arrangement is intended to deliver an integrated, scalable, effective and cost efficient framework for the delivery of services. The Contractor is committed to achieving this objective.

1.6 Panel Member meetings and reports

- (a) The Contractor must, upon reasonable notice by the Principal, meet with the Principal's Representative, Eligible Agency Representatives or representatives of other Panel Members to discuss issues relating to the provision of services and deliverables by the Panel Members.
- (b) The Principal's Representative will provide the Contractor's Representative with an agenda for any meeting required under clause 1.6(a) at least five Business Days prior to the meeting.
- (c) With the exception of clause 1.6(a), the Contractor must not, and must ensure that its Personnel do not, discuss, whether orally or in writing, anything relating to a Panel Member meeting, this agreement or the performance of the Services, with any other Panel Member, unless the Principal Representative provides express written approval as to the nature, form and timing of that discussion.

- (d) The Contractor must provide any reports, assessments or documentation as are reasonably requested by the Principal in relation to the Services and the operation of the Panel including those specified in Item 4 of Schedule 1.

2 Agreement

2.1 Term of the agreement

This agreement commences on the Commencement Date and continues for the Ordering Period.

2.2 Scope of the agreement

- (a) The Contractor is approved by the Principal to provide to the Principle and Eligible Agencies, the services within the categories stated in item 2 of Schedule 1 which are further described in Part D of the Principal's Request for Proposal RFP # [insert details].
- (b) The Principal may during the term of this agreement approve the Contractor by notice in writing, to provide additional categories of services to the Principle and Eligible Agencies, such approval to take effect from the date of the notice and shall apply for the remainder of the Ordering Period.
- (c) The Principle or any Eligible Agency may procure an offer to perform services from the Contractor using the ordering procedures in clause 4.
- (d) The Contractor agrees to provide all Services in accordance with terms of this agreement.

3 Representatives

3.1 The Principal's Representative under this agreement

The Principal's Representative will represent the Principal for the day to day purposes of this agreement.

3.2 The Customer's Representative under a Purchase Order

The Customer's representative will represent the Customer for the day to day purposes of a Purchase Order.

3.3 Contractor's Representative under this agreement and any Purchase Order

The Contractor must appoint and maintain one or more Contractor's Representatives as specified in Item 6 of Schedule 1, who will represent the Contractor for the day to day purposes of this agreement or any Purchase Order and perform any other functions specified in Item 6 of Schedule 1.

4 Ordering Services

4.1 Ordering Period

- (a) During the Ordering Period, the Principle or any Eligible Agency may issue a request/s for a quote in accordance with clause 4.2 to one or more Panel Members.
- (b) After the expiry of the Ordering Period:
 - (1) the Principle and any Eligible Agency cannot issue any further requests for a quote in accordance with clause 4.1(a); and
 - (2) each Purchase Order that became effective before the expiry of the Ordering Period will continue until all obligations under those Purchase Orders have been

discharged or those Purchase Orders are terminated in accordance with their terms.

4.2 Template Purchase Orders

If the Principle or any Eligible Agency wishes to procure an offer to perform services from the Contractor, the relevant agency will issue to a Panel Member/s a request/s for a quote in the form of a populated or partially populated Template Purchase Order containing information reasonably necessary to allow the Contractor to quote for the services. Such information will include:

- (a) a description of the services and deliverables required that fall with the service categories for which the Contractor is approved under this agreement or pursuant to clause 2.2(b);
- (b) the relevant agency's requirements for the delivery of the Services and Deliverables;
- (c) the matters to be taken into account in the calculation of the Fees;
- (d) the Start Date;
- (e) the Service Period; and
- (f) any further project specific terms and conditions pursuant to which the services and deliverables must be provided.

4.3 Quotes

- (a) If the Contractor wishes to provide a quote for the services, it must:
 - (1) provide a completed Template Purchase Order, including any attachments, and specify the Fees offered by the Contractor;
 - (2) sign the completed Template Purchase Order; and
 - (3) return the completed Template Purchase Order to the Principle or the Eligible Agency as applicable within the time specified by the relevant agency in its request for quote
(Quote).
- (b) The Contractor must clearly demonstrate in each Quote how the Fees offered by the Contractor in that Quote have been calculated.
- (c) By submitting a Quote, the Contractor offers to perform the services described in the Quote in accordance with the terms of this agreement including any project specific terms and conditions pursuant to clause 4.2(f).
- (d) A Quote will be valid and open for acceptance by the Principle or the Eligible Agency for ninety (90) days from the date the Quote was provided by the Contractor to the Principle or the Eligible Agency (**Validity Period**).

4.4 Purchase Orders

- (a) If the Principle or the Eligible Agency wishes to accept the Contractor's Quote, the relevant agency must execute and deliver to the Contractor the completed Template Purchase Order within the Validity Period.
- (b) If the Principle or the Eligible Agency does not accept the Quote the relevant agency may within the Validity Period, at its absolute discretion, request that the Contractor enter into negotiations to resolve any issues identified in the Contractor's Quote. If the parties successfully resolve these issues, the Contractor must issue an updated Quote reflecting the negotiations between the parties. If the Principle or the Eligible Agency wishes to accept the Contractor's updated Quote, the relevant agency must execute and deliver to the Contractor the completed Template Purchase Order issued with the updated Quote within the Validity Period of the updated Quote.

4.5 Separate contracts

- (a) Once executed by both parties, a completed Template Purchase Order will be deemed to be a Purchase Order for the purposes of this agreement and the Principal or Eligible Agency that issued the request for quote shall be the **Customer** under the Purchase Order.
- (b) Each Purchase Order established under this agreement will constitute a separate contract between the Customer and the Contractor and includes:
 - (1) the Purchase Order; and
 - (2) unless the context requires otherwise, clauses 3, 4.5 to 19 (Inclusive), 20.1(b), 20.2, 20.4 to 26 (inclusive); Schedule 1 Items 6 and 8 and Schedule 2 Statement of Requirements, of this agreement.
- (c) Each Purchase Order will commence on the Start Date and will continue for the Service Period.
- (d) As provided in clause 4.2(f), a Purchase Order may contain terms and conditions in addition to those in this agreement.
- (e) The terms of this agreement will prevail over any terms and conditions in a Purchase Order that directly conflict with this agreement, unless the Purchase Order expressly provides that the conflicting term or condition supersedes this agreement.
- (f) Additional or different terms or conditions only apply to the Purchase Order in which they are contained.

5 Performance of the Services

5.1 The Services

The Contractor must perform the Services:

- (a) at the Location/s;
- (b) with due skill and care and by qualified Personnel trained and skilled in the performance of the specific Services involved, in a proper and workmanlike manner, and using materials and Resources suitable for the purposes of this agreement; and
- (c) so as to meet the Customer's requirements including those set out in the Statement of Requirements, any variation and as otherwise referred to in this agreement.

5.2 Specified personnel

- (a) The Contractor acknowledges that the Specified Personnel have a critical role in the provision of the Deliverables and will directly affect the quality of the Deliverables.
- (b) If Specified Personnel are unable or not suitable in the reasonable opinion of the Customer to undertake the work assigned to them the Contractor must provide replacement personnel acceptable (on reasonable grounds) to the Customer at no additional charge as soon as is practicable.
- (c) The Contractor must:
 - (1) utilise the Specified Personnel to provide the Deliverables as and when required in accordance with the Purchase Order; and
 - (2) not remove or replace the Specified Personnel without the Customer's prior written consent, except that the Contractor may replace Specified Personnel where they are no longer available due to personal hardship, serious illness, death or resignation.
- (d) Any replacement Specified Personnel must be approved by the Customer acting reasonably. The Contractor must provide the Customer with such information as the Customer reasonably requires concerning any proposed replacement of any Specified Personnel (including a résumé).

5.3 Customer's requirements

- (a) The Contractor must take all steps necessary to clarify and confirm the Customer's requirements for the Services.
- (b) The Contractor must examine the information and Documents relating to the Services that are referred to in this agreement, or otherwise provided by the Customer. The Contractor is deemed to have satisfied itself of the sufficiency, clarity, accuracy and suitability of that information and those Documents for the purpose of satisfying its obligations under this agreement.
- (c) If the Contractor becomes aware of any conflict or ambiguity in those requirements, it must immediately advise the Customer in writing requesting the further information, documents, amendments or clarification it requires.

6 Collections' Materials

6.1 Contractor's acknowledgement and warranty

- (a) The Contractor acknowledges that the Collections' Materials include a range of materials which may be in a condition varying from fragile to good.
- (b) The Customer does not represent and makes no warranty that the Collections' Materials are suitable for digitisation as required under this agreement.
- (c) The Contractor must form its own independent judgements, interpretations, conclusions, and deductions about the suitability of the Collections' Materials for the performance of the Services and acknowledges that the Customer is relying on the Contractor's judgement, expertise and experience in making those assessments.
- (d) The Contractor represents and warrants that it has conducted its own analysis and review of the Collections' Materials and has satisfied itself that it has the requisite skills, experience and Resources to perform the Services.

6.2 Licence

- (a) The Contractor acknowledges and agrees that the Collections' Materials remain the property of the Customer.
- (b) The Customer grants or will procure a royalty free, non-exclusive, non-transferrable licence for the Contractor to use subject to this agreement the Collections' Materials for the purposes of performing the Services.
- (c) The Contractor must ensure that all Collections' Materials are used strictly in accordance with any conditions or restrictions set out in the Purchase Order and any direction by the Customer.

6.3 Contractor's obligations

- (a) Without the prior written consent of the Customer, the Contractor must not:
 - (1) use the Collections' Materials other than for the performance of the Services,
 - (2) adapt or modify any Collections' Materials;
 - (3) pledge, mortgage, charge, assign or cause any lien or other security to arise over any Collections' Materials;
 - (4) hire, lease, lend or otherwise bail or transfer possession of any Collections' Materials;
 - (5) create or purport to create any interest in any Collections' Materials in favour of itself or any other person, body or institution; or
 - (6) deny or otherwise question or impugn the Library's title to, or right to the possession of any Collections' Materials.

- (b) The Contractor must:
- (1) take all reasonable care of the Collections' Materials including accounting for, preserving, installing or handling the Collections' Materials in accordance with the Purchase Order and any reasonable instruction of the Customer;
 - (2) undertake, and ensure that its Personnel undertake, training in the preservation and handling of the Collections' Materials as required by the Customer;
 - (3) only hold the Collections' Materials at the Locations and for the duration specified in the Purchase Order;
 - (4) only release the Collections' Materials to Personnel of the Customer authorised for this purpose by the Customer's Representative;
 - (5) promptly inform the Customer of any loss, destruction or damage to any Collections' Materials;
 - (6) promptly comply with the instructions of the Customer concerning the management of any damage to the Collections' Materials; and
 - (7) promptly release the Collections' Materials to the Customer in the manner prescribed in the Purchase Order when the Collections' Materials are no longer required for the purposes of performing the Services.

6.4 Delivery and risk

- (a) The Collections' Materials will be delivered to the Contractor in the manner specified in the Purchase Order.
- (b) The Customer will, at its cost, arrange all packing (including crating) and transit arrangements for the delivery of the Collections' Materials to the Location.
- (c) The risk of damage to or loss of the Collections' Materials passes to the Contractor upon their delivery to the Location.

6.5 Deletion or destruction of copies of the Deliverables

After all Defects in Deliverables under a Purchase Order are rectified or if there are no Defects, after 120 days following the commencement of the Warranty Period, the Contractor must delete or destroy all copies of the Deliverables including digital copies, in its custody, control or possession and provide to the Customer in writing certification of the deletion or destruction. The Contractor's obligations under this clause apply subject to any audit obligations imposed upon the Contractor by any Governmental Agency.

7 Standard of Services

7.1 Service Levels

- (a) The Contractor must ensure that the Services are performed so as to meet or exceed the Service Levels.
- (b) Until termination or expiration of a Purchase Order, the Contractor must ensure that there is no:
 - (1) degradation of Service Levels or quality of Services; or
 - (2) interruption to the provision of Services.
- (c) The Contractor must monitor its performance against the Service Levels and if requested must provide a written report measuring its compliance with the Service Levels.
- (d) If the Contractor fails to meet the Service Levels then:
 - (1) the Contractor must promptly report that failure to the Customer;

- (2) the Contractor must promptly take corrective action to remedy the failure and implement steps to ensure that it will not occur again; and
- (3) the Contractor must investigate the cause of the failure and report to the Customer on the cause and the steps being taken to remedy that failure.

7.2 Rejection and rectification of Defects

- (a) The Customer may reject any Services and Deliverables:
 - (1) that have not been ordered by the Customer's Representative;
 - (2) that do not comply with the Purchase Order; or
 - (3) that breach any Contractor warranties, including Services and Deliverables delivered in breach of the Contractor warranties set out in clause 8.4.
- (b) Without prejudice to any other rights which the Customer may have, if the Customer rejects any or part of the Services pursuant to clause 7.2(a), the Customer may:
 - (1) withhold any money payable or recover any money paid to the Contractor for the Services; and
 - (2) set off any amount it is so entitled to withhold or recover from the Contractor against any other sum owed by it, or which becomes owing by it, to the Contractor on any account whatsoever.
- (c) If at any time during the Warranty Period the Customer believes that there is a Defect, the Customer shall notify the Contractor in writing of that Defect.
- (d) Without prejudice to any other right or remedy of the Customer (whether arising by statute or otherwise), the Contractor shall at its own cost and expense within a time agreed between the Parties, or if no time is agreed, within a time that is reasonable in all the circumstances, remedy the Defect.
- (e) All remedial work or replacement of the whole or any part of the Deliverable carried out or supplied pursuant to clause 7.2(c) is hereby warranted to the same extent as the Deliverable so that clauses 7.2(c) and 7.2(d) apply to the remedial work or replacement, as the case may be.
- (f) If the Contractor fails to remedy a notified Defect in accordance with subclause 7.2(c) within the time referred to in that subclause, the Customer may cause such work as is reasonably required to remedy the Defect to be performed by a person other than the Contractor and the cost of that work shall be taken as debt due and owing to the Customer.

7.3 Time of the essence

- (a) Time is of the essence in the performance of the Services.
- (b) If the Contractor fails to deliver the Services by the Due Date specified in the Purchase Order, the Contractor will be liable to pay the Customer liquidated damages as a debt due and owing at a rate of \$AUD per calendar day specified in the Purchase Order until the date of actual delivery or number of calendar days after the Due Date specified in the Purchase Order whichever is the earlier.
- (c) The Contractor acknowledges that the rate for liquidated damages in clause 7.3(b) represents a genuine pre-estimate of the amount of loss or damage which the Customer is likely to suffer if the Contractor fails to deliver the Services by the Due Date specified in The Purchase Order.
- (d) The Customer may set off any amount it is entitled to recover from the Contractor as liquidated damages against any other sum owed by the Customer, or which becomes owing by the Customer, to the Contractor on any account whatsoever.

7.4 Customer reports and meetings

The Contractor must:

- (a) provide any reports, assessments or documentation specified in the Purchase Order to the Customer in relation to the Services; and
- (b) upon request by the Customer, meet with the Customer to review the Contractor's performance of the Services.

7.5 Subcontracting

- (a) The Contractor must not, without the Customer's prior written approval, subcontract the performance of all or any part of the Services.
- (b) In giving written approval to subcontracting the Customer may impose such terms and conditions as it thinks fit.
- (c) The Contractor is fully responsible and liable under this agreement for the performance of the Services notwithstanding that the Contractor may subcontract the performance of all or any part of the Services to a permitted sub-contractor in accordance with clause 7.5(a).

7.6 Delays

- (a) If the Contractor becomes aware of an actual or potential problem in the provision of the Services, including any actual or potential problem that may cause a delay in the delivery of the Services, the Contractor must immediately inform the Customer in writing of the actual or potential problem and the Contractor's proposed method of resolution and work with the Customer to prevent or circumvent the problem.
- (b) The Customer may in its discretion provide its written consent to an extension of time for the performance of the Services.
- (c) If the Customer refuses to grant an extension, then:
 - (1) the applicable schedule for the delivery of the Services in the Purchase Order remains unchanged; and
 - (2) the Contractor must:
 - (A) do, at no additional cost to the Customer, all things reasonably necessary to overcome the actual or possible delay, including increasing the numbers or average skill or experience level of Contractor Personnel (or both); and
 - (B) inform the Customer of all solutions and strategies to overcome, manage or minimise the delay or failure.

7.7 Variations

- (a) The Customer will not be liable for any additional work undertaken or expenditure incurred by the Contractor pursuant to a variation unless the variation has been effected in accordance with this clause 7.7 and the additional expenditure (if any) has been agreed to by the Customer.
- (b) The Contractor may recommend or the Customer may request variations to any part of the Services, this agreement or a Purchase Order from time to time
- (c) Any variation recommendation or request must:
 - (1) include sufficient information to enable the other party to evaluate the variation, including any risks and impact assessment on the provision of the Services; and
 - (2) identify the parts of this document or Purchase Order that is the subject of the variation.
- (d) Until any variation and any conditions of such variation are agreed in writing pursuant to clause 25.4, the Contractor must continue to perform its obligation under this agreement as if the variation had not been proposed.

8 Contractor's obligations

8.1 Safety

The Contractor must ensure that all equipment the Contractor uses in the performance of any part of the Services:

- (a) is in a safe condition; and
- (b) is operated safely when not in use is properly stored and secured.

8.2 Damage

- (a) The Contractor must not damage any part of the Locations or the fixtures or fittings of the Locations.
- (b) The Contractor is liable for any loss or damage to:
 - (1) the property of the Customer;
 - (2) the property of any occupant of the Locations; and
 - (3) the Locations,that is caused directly or indirectly by the Contractor.

8.3 Compliance with policies and procedures

The Contractor must comply with:

- (a) the Code;
- (b) all laws, standards and mandatory industry codes relevant to the performance of the Services including any specific laws, standards and mandatory industry codes that are stipulated in the Statement of Requirements; and
- (c) when on any premises occupied by the Customer, the Customer's:
 - (1) policies, directions and procedures relating to occupational health and safety;
 - (2) security and confidentiality requirements; and
 - (3) work standards, methodologies and procedures.

8.4 Contractor's warranty

The Contractor represents and warrants for the benefit of the Principal and all Customers that:

- (a) it and its Personnel have the necessary Resources available to provide the Services in accordance with this agreement;
- (b) all work performed under this agreement will be carried out and completed with due skill and care and by qualified Personnel trained and skilled in the performance of the specific Services involved, in a proper and workmanlike manner, and using materials suitable for the purpose;
- (c) it, its agents and subcontractors will hold such licences, permits, registrations and insurances as are required under any state, territory or Commonwealth legislation or regulation to carry out any work under this agreement;
- (d) the Services will be fit for the purpose for which they are sought;
- (e) any materials that the Contractor uses to perform the Services will be free from defects in design, performance and workmanship;
- (f) it will be the legal and beneficial owner of any Contractor Material and other materials used when performing the Services, free of any third party interests;

- (g) all information provided by it or on its behalf to the Principal or any Customer is true and correct in all material respects and is not, whether by omission of information or otherwise, misleading; and
- (h) it has not withheld from the Principal or the Customer any Document, information or other fact material to the decision of the Principal to enter into this agreement or the Customer to into a Purchase Order.

9 The Customer' obligations

The Customer must:

- (a) provide the Contractor with such information and assistance reasonably requested and necessary to enable the Contractor to perform the Services; and
- (b) subject to the Contractor complying with clause 8.3, provide the Contractor with:
 - (1) the facilities described in the Purchase Order; and
 - (2) access to the Customer' premises and the Locations to the extent reasonably requested and necessary to enable the Contractor to perform the Services .

10 Fee

10.1 Payment of the Fee

- (a) In consideration for the performance of the Services in accordance with the terms of this agreement and the Purchase Order, the Customer must pay the Fees to the Contractor, calculated in accordance with the Purchase Order.
- (b) The Fees for the Services are deemed to include provision for all costs and expenses incurred by the Contractor in complying with all of its obligations in respect of the Services.

10.2 Deferral of payment

If the Purchase Order provides that the Contractor is to be paid by progressive instalments according to completed Milestones, the Customer may, without derogating from any other right it may have, defer payment of an instalment until the Contractor has completed, to the satisfaction of the Customer, that part of the Services to which that instalment relates.

10.3 Invoices

- (a) Within 5 Business Days after the end of each month (or such other period as agreed in the Purchase Order) the Contractor must invoice the Customer for the Fees payable for the Services provided in that month.
- (b) An invoice for payment must:
 - (1) include any information reasonably requested by the Customer; and
 - (2) be in a form reasonably requested by the Customer.
- (c) Subject to clauses 10.2 and 10.4, the Customer must pay a correctly prepared invoice within **30 days** after receipt of the invoice.

10.4 Payment disputes

If there is a dispute about whether a Fee, refund or other amount contemplated by this agreement is payable or available, the Customer may withhold the amount in dispute until the resolution of the dispute.

11 Audit

11.1 Records and retention

- (a) The Contractor must generate and maintain such financial, operational and technical records relating to this agreement as are reasonably necessary for the Principal or any Customer to conduct an audit in accordance with this clause 11 or otherwise required by any applicable law, including timesheets of work performed (the **Records**).
- (b) The Contractor must maintain the Records in an accessible and secure electronic form for a period of at least 7 years from the date of their creation.

11.2 Audit rights

- (a) The Principal or any Customer, or an Auditor appointed by the Principal or a Customer, may audit and inspect:
 - (1) any Records;
 - (2) any Resources used by the Contractor in connection with the provision of the Services;
 - (3) any premises from which the Services are being provided; and
 - (4) such other Documents, practices, procedures and matters as the Principal or a Customer reasonably considers relevant to the Contractor's provision of the Services,to verify whether the Contractor is complying with this agreement or a Purchase Order, including whether the Fees invoiced are accurate.
- (b) The Contractor must provide all reasonable assistance and information requested by any Auditor in connection with the conduct of any audit and inspection.
- (c) Each party will bear their own costs of conducting and participating in any audit and inspection under this clause this clause 11, except where the audit and inspection discloses material breaches of this agreement or a Purchase Order by the Contractor in which case the Contractor will pay the Principal's or as applicable, the Customer's reasonable costs of conducting the audit and inspection.

12 Dispute resolution

- (a) This clause 12 applies to any dispute that arises between the parties in connection with this agreement or a Purchase Order, except disputes relating to the construction of this agreement including this clause 12 (**Dispute**).
- (b) Subject to clause 12(i), a party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first giving a Dispute Notice and complying with the provisions of this clause 12.
- (c) If a party considers that a Dispute has arisen, it may issue a written notice to the other party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (d) The parties must promptly hold good faith discussions between the Contractor's Representative and the Principal's Representative/Customer's Representative¹ after issue of a Dispute Notice to attempt to resolve the Dispute (**First Level Discussions**), and must (subject to legal professional privilege) furnish to the other party all information with respect to the Dispute which is appropriate in connection with its resolution.
- (e) If the Dispute has not been resolved within 5 Business Days after commencement of First Level Discussions, the parties must attempt to resolve the Dispute by holding good faith

¹ If the dispute relates to the agreement, the Principal's Representative is the contact. If the Dispute relates to a Purchase Order, the Customer's Representative is the contact.

discussion between senior executive of the Principal/Customer² and a person of equivalent seniority of the Contractor (**Second Level Discussions**).

- (f) If the Dispute has not been resolved within 10 Business Days after commencement of Second Level Discussions, the parties agree to refer the dispute to a mediator if one of them requests. If the parties cannot agree on the mediator, the chairperson of the Resolution Institute (LEADR & IAMA) (ABN 69 008 651 232 <https://www.resolution.institute/> or the chairperson's nominee will appoint a mediator.
- (g) If the Dispute has not been resolved within 1 calendar month after the appointment of the mediator, the mediation process will terminate and either party may pursue its rights and remedies under this agreement as it sees fit.
- (h) Subject to clause 10.4, the parties will continue performing their respective obligations under this agreement while a Dispute is being resolved, unless the nature of the Dispute renders it impossible to do so or unless and until such obligations are terminated or expire in accordance with this agreement.
- (i) Notwithstanding anything in this clause 12, a party at any time may commence court proceedings in relation to a dispute or claim arising in connection with this agreement where that party seeks urgent interlocutory relief.

13 Publicity

13.1 Use of names

- (a) The Contractor must not, and must ensure that its officers, employees, agents and subcontractors do not, use the name, trademarks or logos of the Principal or the Customer, except with the prior written consent of the Principal or the Customer as appropriate, which consent may be granted, withheld or made conditional in the Principal's or the Customer's absolute and unfettered discretion.
- (b) Neither party may use the other party's name, trademarks or logos in any way that may bring the other party into disrepute in any way.

13.2 Publicity

The Contractor must not make any reference to the Principal or any Customer in any literature or promotional materials or in any other marketing or promotional activity without the Principal's or the Customer's prior written consent.

14 Intellectual Property

- (a) Subject to clause 14(b), Intellectual Property in all Contract Material will vest in the Customer upon creation. The Contractor must, upon request by the Customer, do all things necessary to vest title and Intellectual Property in the Contract Material in the Customer.
- (b) The Contractor and its licensors will retain all title and Intellectual Property rights in the Existing Material. The Contractor agrees to grant the Customer (at no additional cost to the Customer) the right to use, sublicense, supply or reproduce:
 - (1) the Existing Material; and
 - (2) all methodologies, processes, techniques, ideas, concepts and know-how embodied in the Existing Material,to the extent the Existing Material is required for use in connection with the Contract Material.

² as per footnote 1.

- (c) The Contractor must obtain from its Personnel waivers of all Moral Rights in relation to the Contract Material and Existing Material, and promptly provide copies of such waivers to the Customer upon request.

15 Copyright Status

- (a) The parties understand that the Collections' Material may include some works that will be treated as public domain works, some works that will be treated as in-copyright works and some works as "orphan works". All parties whether under this agreement or any Purchase Order intend to perform this agreement in compliance with copyright law.
- (b) The Contractor must use all reasonable endeavours to ensure that only the Customer and its Personnel are permitted access to the digitised version of Collections' Material.
- (c) Upon termination of a Purchase Order any intellectual property rights subsisting in any metadata created by the Contractor are automatically assigned to the Customer.

16 Confidential Information

- (a) Subject to this clause 16, Confidential Information of a party may only be used for the purposes of performing this agreement or a Purchase Order.
- (b) Subject to this clause 16, a party must not disclose the other party's Confidential Information without the prior written consent of the other party which may be given subject to any terms and conditions that the consenting party requires.
- (c) A party is not bound by this clause 16, in relation to information which:
 - (1) becomes generally available to the public without a breach of this clause 16;
 - (2) has been independently created, developed or acquired by that party without breach of this clause 16;
 - (3) has been independently disclosed, without an obligation of confidentiality, to that other party, or their Personnel; or
 - (4) that is required to be disclosed by applicable law, or under compulsion law by a court or Government Agency or by the rules of any relevant stock exchange or regulator, as long as the recipient:
 - (A) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
 - (B) before disclosing any information gives a reasonable amount of notice to the discloser and takes all reasonable steps (whether required by the discloser or not) to maintain such Confidential Information in confidence.
- (d) A party may disclose the Confidential Information of the other party to those of its Personnel who:
 - (1) need to know; and
 - (2) have agreed to keep the Confidential Information confidential on terms similar to this clause 16.
- (e) Under a Purchase Order, a party may disclose the Confidential Information of the other party to the Principal for the purposes of managing the Panel.
- (f) Each party acknowledges that:
 - (1) the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information of that party, and that monetary damages would be an insufficient remedy; and
 - (2) in addition to any other remedy available at law or in equity, each party is entitled to injunctive relief to prevent a breach of, and to compel specific performance of this clause 16.

17 Privacy obligations

Where the Contractor has access to Health Information or Personal Information in order to fulfil its obligations under this agreement, it must:

- (a) where the Contractor is responsible for holding such information, ensure that it is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
- (b) not use such information other than for the purposes of performing its obligations under this agreement, unless:
 - (1) required or authorised by law; or
 - (2) authorised in writing by the individual to whom the information relates but only to the extent authorised;
- (c) not disclose such information without the prior written agreement of the Customer or the prior written agreement of the individual to whom the information relates, unless required or authorised by law;
- (d) ensure that only authorised Personnel have access to such information;
- (e) immediately notify the Customer if:
 - (1) the individual to whom the information relates authorises the Contractor's use of his/her information for other purposes;
 - (2) the individual to whom the information relates consents to the Contractor's disclosure of his/her information; and/or
 - (3) it becomes aware that a disclosure of such information is, or may be required or authorised by law;
- (f) comply with such other privacy and security measures in the Privacy Management Plan or as the Customer otherwise reasonably advises the Contractor in writing from time to time;
- (g) make its Personnel aware of the Contractor's obligations under this clause; and
- (h) immediately notify the Customer upon becoming aware of any breach of this clause 17.

18 Access to Information (GIPA Act, s. 121)

18.1 Effect of GIPA on this agreement

The parties acknowledge and agree that this agreement applies subject to the requirements of the *Government Information (Public Access) Act 2009 (GIPA Act)*.

18.2 Access to Information

- (a) The Contractor must, within seven (7) days of receiving a written request from the Principal or a Customer, provide it with immediate access to information contained in records held by the Contractor:
 - (1) that relates directly to the Contractor's obligations under this agreement or a Purchase Order including information collected by the Contractor from members of the public; and
 - (2) information received by the Contractor from the Principal or the Customer under this agreement.
- (b) For the purposes of clause 18.2(a) information does not include:
 - (1) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;

- (2) information that the Contractor is prohibited from disclosing to the Principal or the Customer by provision made by or under any legislative instrument, whether of any State or Territory, or of the Commonwealth; or
 - (3) information that, if disclosed to the Principal or the Customer, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Principal or the Customer, whether at present or in the future.
- (c) The Contractor will provide copies of any of the information in clause 18.2(a), as requested by the Principal or the Customer, at the Contractor's own expense.

18.3 Consultation Clause (GIPA Act, s. 54)

- (a) The Principal or Customer will take reasonably practicable steps to consult with the Contractor before providing any person with access to information relating to this agreement or a Purchase Order, in response to an access application under the *Government Information (Public Access) Act 2009 (GIPA Act)*, if it appears that the information:
- (1) includes Health Information or Personal Information about the Contractor or its employees;
 - (2) concerns the Contractor's business, commercial, professional or financial interests; or
 - (3) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Contractor; or
 - (4) concerns the affairs of a government of the Commonwealth or another State (and the Contractor is that government);
 - (5) the Contractor may reasonably be expected to have concerns about the disclosure of the information; and
 - (6) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (b) If, following consultation between the Principal or the Customer and the Contractor, the Contractor objects to disclosure of some or all of the information, the Contractor must provide details of any such objection (including the information objected to and the reasons for any such objection) within five (5) days of the conclusion of the consultation process.
- (c) In determining whether there is an overriding public interest against disclosure of government information, the Principal or the Customer will take into account any objection received by the Contractor.
- (d) If the Contractor opposes the disclosure of some or all of the information, but the Principal or the Customer decides nonetheless to release the information, the Principal or the Customer must not provide access until it has given the Contractor notice of its decision and notice of the Contractor's right to have that decision reviewed.
- (e) Where the Principal or the Customer has given notice to the Contractor in accordance with clause 18.3(d) the Customer must not provide access to the information:
- (1) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
 - (2) where any review of the decision duly applied for is pending.
- (f) The reference in 18.3(e)(1) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

19 Insurance

The Contractor must:

- (a) hold:
- (1) all insurances required by law, including workers compensation insurance in accordance with relevant State or Territory legislation;
 - (2) public liability insurance for an amount of not less than \$10 million per claim;
 - (3) professional indemnity insurance for an amount of not less than \$1 million per claim;
 - (4) insurance to cover loss of or damage to property (which insurance must cover any property including the Deliverables to be supplied to the Customer until the Customer takes physical possession of that property) for an amount per claim of not less than the full replacement value of any property to be supplied under this agreement from time to time or such other amount as is nominated by the Principal in writing; and
 - (5) such other insurance specified in a Purchase Order or as is reasonably required by the Customer from time to time in respect of any liability of the Contractor that may arise from the performance of its obligations under a Purchase Order; [Note: Additional insurances provisions related to Collections' Materials have been included in Schedule 1.]
- (b) if requested by the Principal or a Customer, provide the Principal or the Customer with a copy of these insurance policies and evidence of currency of the policies.

20 Termination

20.1 Termination for convenience

Either party may at any time terminate:

- (a) this agreement; or
- (b) any Purchase Order,

with 90 days' prior written notice to the other party.

20.2 Financial consequences of termination for convenience

- (a) If a Purchase Order is terminated pursuant to clause 20.1, the Customer must pay the Contractor:

- (1) the amount for Services properly carried out prior to the date of termination that would have been payable if the Purchase Order had not been terminated; or
- (2) if payments have been made in progressive instalments according to completed Milestones, the payment amounts specified in the Purchase Order for Milestones completed prior to the date of termination that would have been payable if the Purchase Order had not been terminated.

- (b) The amount that the Contractor is entitled to receive under this clause 20.2 will be a limitation on the Customer's liability to the Contractor arising out of, or in any way in connection with, the event giving rise to the entitlement under this clause.

20.3 Termination of agreement for cause

Either party may terminate this agreement immediately by notice to the other party if:

- (a) the other party suffers an Insolvency Event; or
- (b) the other party breaches this agreement and:
 - (1) the breach is not capable of remedy; or

- (2) the breach is capable of remedy and the other party fails to remedy the breach within 10 Business Days of receiving a notice from a party requiring the breach to be remedied.

20.4 Termination of Purchase Orders

- (a) Subject to clause 20.4(b), the termination of this agreement will not affect any Purchase Orders and a Purchase Order will continue in effect until its termination or expiration.
- (b) All Purchase Orders will automatically terminate upon a termination under clause 20.3(a).
- (c) Either party may terminate a Purchase Order in full immediately by notice to the other party if the other party breaches the Purchase Order and:
 - (1) the breach is not capable of remedy; or
 - (2) the breach is capable of remedy and the other party fails to remedy the breach within 10 Business Days of receiving a notice from a party requiring the breach to be remedied.

20.5 After termination

On expiration or termination of this agreement or any Purchase Order:

- (a) subject to clause 20.2(b), accrued rights or remedies of a party are not affected;
- (b) each party must deliver to the other any of the other's Confidential Information or Intellectual Property in its care, custody or control; and
- (c) the Contractor must immediately deliver:
 - (1) in the case of the termination of this agreement, to the Principal all the Principal's Material; and
 - (2) in the case of the termination of a Purchase Order, to the Customer all the Contract Material and Customer's Material in its care, custody and control.

20.6 Survival

The following clauses survive any termination or expiration of this agreement or Purchase Order: 7.2, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20.2, 20.5, 20.6, 21, 22, 23, 24, 25 and 26 and any other provision of this agreement which contemplates performance or observance following any termination or expiration of this agreement or a Purchase Order.

21 Representations and warranties

21.1 General warranties

The Contractor represents and warrants to the Principal and the Customer that:

- (a) it has full power and authority to enter into and perform its obligations under this agreement or a Purchase Order;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this agreement or a Purchase Order in accordance with its terms;
- (c) no litigation, arbitration, dispute or administrative proceeding has been commenced, is pending or to its knowledge threatened, by or before any Governmental Agency, and no judgment or award has been given, made or is pending, by or before any Governmental Agency, which in any way questions its power or authority to enter into or perform its obligations under this agreement or a Purchase Order; and
- (d) that in executing this agreement or a Purchase Order the Contractor relies solely on its own judgment, belief and knowledge and on such advice as they may have received from their

own legal counsel and that it has not been influenced by any representation or statements made by the Principal or a Customer.

21.2 Continuing warranties

The representations and warranties given in this agreement or a Purchase Order are regarded as repeated during the term of this agreement and any Service Period with respect to the facts and circumstances then subsisting.

22 Indemnity

- (a) The Contractor is liable for, and indemnifies the Principal under this agreement or a Customer under a Purchase Order from and against all loss or damage (including legal costs) incurred or suffered by the Principal or the Customer directly or indirectly in connection with:
- (1) any work under or breach of this agreement or Purchase Order by the Contractor;
 - (2) any unlawful or negligent act or omission of the Contractor or its Personnel;
 - (3) any alleged or actual infringement of a third party's Intellectual Property related to or in connection with the Contractor's provision of, or the Customer's receipt or use of, the Services;
 - (4) any entitlement of any employer, sub-contractor or agent of the Contractor to benefits under any applicable law; or
 - (5) any act or omission of the Contractor or any person acting or purporting to act on behalf of the Contractor.
- (b) Each indemnity contained in this agreement is a continuing obligation notwithstanding:
- (1) any settlement of account; or
 - (2) the occurrence of any other thing,
- and remains in full force and effect until all moneys owing, contingently or otherwise, under any of them have been paid in full.

23 Costs, taxes and GST

23.1 Costs

Each party must meet or pay its own legal costs and disbursements in respect of the preparation, negotiation and execution of this agreement or any Purchase Order.

23.2 Taxes

Subject to clause 23.3, the Contractor is responsible for and must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this agreement.

23.3 GST

- (a) A reference in this clause 23.3 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this deed which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this agreement, the consideration provided for that supply is increased by the rate at which that GST is imposed.

The additional consideration is payable at the same time as the consideration to which it relates.

- (d) If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with this deed, the amount of the reimbursement will be net of any input tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.

24 Notices

24.1 Service of notices

Any notice or communication including any request, demand, consent, approval or confirmation to or by a party to this agreement must be in legible writing and in English and delivered by hand or sent by pre-paid post or facsimile addressed:

- (a) if to the Principal, to the address set out in Item 7 of Schedule 1;
 - (b) if to the Customer, to the address set out in the Purchase Order;
 - (c) if to the Contractor, to the address set out in Item 8 of Schedule 1,
- or such other address for notices as notified to the Principal, the Customer or the Contractor by the other of them (as the case may be).

24.2 Receipt of notices

- (a) A notice delivered by hand is regarded as given and received upon delivery.
- (b) A notice sent by post is regarded as given and received on the second Business Day following the date of postage.
- (c) A facsimile is regarded as given and received when successfully transmitted unless the addressee informs the sender that the notice is illegible or incomplete within 4 hours of it being received or regarded as received.
- (d) A notice delivered or received other than on a Business Day or after 5.00pm is regarded as received at 9.00am the following Business Day and a notice delivered or received before 9.00am is regarded as received at 9.00am.

25 General

25.1 Negation of agency

- (a) The Contractor must not represent itself, and must ensure that its employees and sub-contractors do not represent themselves, as being employees, partners or agents of the Principal or a Customer.
- (b) The Contractor will not by virtue of this agreement be or for any purpose be deemed to be an employee, partner or agent of the Principal or a Customer.

25.2 Applicable law

- (a) This agreement is subject to the laws of New South Wales.
- (b) The parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.

25.3 Waiver

A failure or delay in exercise or partial exercise of a right arising from a breach of any provision of this agreement or a Purchase Order is not to be regarded as a waiver of that right and cannot be relied upon as a waiver of that right.

25.4 Variation

This agreement or any Purchase Order may not be varied except with the written consent of the parties.

25.5 Assignment and novation

- (a) The Contractor must not assign, in whole or in part, or novate its rights and obligations under this agreement or any Purchase Order without the prior consent of the Principal or the Customer as applicable.
- (b) The Principal or the Customer as applicable may assign any of its rights under this agreement or any Purchase Order, or may novate its rights and obligations under this agreement or any Purchase Order:
 - (1) without the consent of the Contractor, to any Government Agency that assumes under statute or ministerial direction, the responsibility of administering the functions or discharging the role of the Principal or the relevant Customer; or
 - (2) with the consent of the Contractor, which must not be unreasonably withheld or delayed, to any other person.
- (c) The Service Provider must execute all documents necessary to give effect to any novation or assignment permitted under clause 25.5(b).

25.6 Severability

Each provision of this agreement or any Purchase Order will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.

25.7 Entire agreement

- (a) This agreement represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.
- (b) A Purchase Order represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.
- (c) The Principal does not intend to be, or will not be, legally bound by:
 - (1) any terms or conditions contained or referenced in any invoices, consignments, receipts or similar documents which are exchanged or signed by the parties in the course of performing and receiving the Services; or
 - (2) any standard terms and conditions of the Contractor relating to the Services.

25.8 Counterparts

- (a) This agreement and each Purchase Order may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this agreement or any Purchase Order by signing any counterpart.

26 Definitions and interpretation

26.1 Interpretations

In this agreement and any Purchase Order:

- (a) words importing the singular include the plural and vice versa;
- (b) clause headings are for convenient reference only and have no effect in limiting or extending the language to which they refer;
- (c) where any word or phrase has been given a defined meaning, any other part of speech or their grammatical form in respect of that word, has a corresponding meaning;
- (d) the words 'includes' and 'including' do not imply any limitations;
- (e) a reference to a document or agreement, including this agreement or any Purchase Order, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (f) a reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency;
- (g) references to clauses, parties, attachments, annexures and schedules are references to clauses of, and parties, attachments, annexures and schedules to, this agreement;
- (h) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (i) a reference to writing includes any method of representing or reproducing words, figures or symbols in a permanent and visible form, but it does not include electronic form unless expressly stated to include electronic form.

26.2 Definitions

The meanings of the terms used in this document are set out below.

Term	Meaning
Auditor	any auditor, inspector or other representative appointed by the Principal or a Customer, which may include a representative of the NSW Auditor-General.
Business Day	a day on which banks are open for business in Sydney and which is not a Saturday, Sunday or public holiday.
Code	the NSW Government Code of Practice for Procurement as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to this agreement. The Code can be viewed and downloaded from: http://www.procurepoint.nsw.gov.au/policies/nsw-government-procurement-information .
Collections' Materials	the materials specified in the Purchase Order which are to be digitised as part of the Services and which may include manuscripts, bound and loose diaries, letters and papers, photographs, transparencies and negatives, maps, plans and posters, books, newspaper and serial volumes, microfiche or microfilm reels, artefacts and realia/objects and audio visual recordings (including cassettes, DAT, micro-cassette and reel to reel tapes, films and video tapes).

Term	Meaning
Commencement Date	the date for commencement of this agreement specified in Item 1 of Schedule 1.
Confidential Information	<p>of a party means information in oral or visual form, or is recorded or stored in a Document that:</p> <ol style="list-style-type: none"> 1 is by its nature confidential; 2 is designated by a party as confidential; or 3 that a party knows or ought to know is confidential; <p>and includes but is in no way limited to:</p> <ol style="list-style-type: none"> 4 in the case of the Principal or the Customer, respectively the Principal's Material or the Customer's Material including the financial information, the corporate information and the commercial information of the Principal or the Customer; 5 in the case of the Contractor, the Contractor Material including the financial information, the corporate information and the commercial information of the Contractor; 6 any material which relates to the affairs of a third party; and 7 information relating to the business, affairs, policies, strategies, practices and procedures of a party.
Contract Material	all new works brought or required to be brought into existence specifically as part of, or for the purpose of performing the Services including the Deliverables, Documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.
Contractor Material	any material which is provided by or to which access is given by the Contractor to the Principal or the Customer for the purposes of this agreement or any Purchase Order including Documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means, other than Contract Material.
Contractor's Representative	the person or persons for the time being holding, occupying or performing the duties of the position, set out in Item 6 of Schedule 1.
Corporations Law	the <i>Corporations Act 2001</i> (Cth).
Customer	the Principal or any Eligible Agency that procures Services under this agreement.
Customer's Material	any material provided by or to which access is given by the Customer to the Contractor for the purposes of a Purchase Order including the

Term	Meaning
	Collections' Materials, Documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.
Customer's Representative	the person nominated in the Purchase Order.
Defect	a fault, error, failure, degradation, deficiency or malfunction that causes the relevant Deliverable not to meet requirements specified in the Statement of Requirements..
Deliverables	the digitised products derived from the Collections' Materials to be produced or are produced as a result of the Services which are described in the Purchase Order.
Dispute Notice	is defined in clause 12(c).
Document	includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, circuit, circuit layout, drawing, specification, material or any other means by which information may be stored or reproduced.
Due Dates	the dates specified for the Delivery of the Services in the Purchase Order in relation to which liquidated damages provisions in clause 7.3 apply.
Eligible Agencies	has the meaning given in item 3 of Schedule 1.
Existing Material	is all Intellectual Property owned by or licensed to the Contractor before the date of this agreement and includes any developments or enhancements to such property created during or because of the performance of the Services.
Fees	the fees specified in the Purchase Order.
Governmental Agency	any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
Health Information	has the meaning given in the PMP or the <i>Health Records and Information Privacy Act 2002 (NSW)</i> .

Term	Meaning
Insolvency Event	<p>in the context of a person means:</p> <ol style="list-style-type: none"> 1 receivership: a receiver, receiver and manager, official manager, trustee, administrator, other controller (as defined in the Corporations Law) or similar official is appointed, or steps are taken for such appointment, over any of the equipment or undertaking of the person; 2 insolvency: the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Law or is presumed to be insolvent under the Corporations Law; 3 ceasing business: the person ceases or threatens to cease to carry on business; or 4 liquidation: an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person otherwise than for the purpose of an amalgamation or reconstruction.
Intellectual Property	all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, trade or service marks, patents, registered and unregistered trademarks, registered designs, trade secrets, know-how, moral rights, rights in relation to semiconductors and circuit layouts, trade, business or company name, indication or source or appellation of origin, or other proprietary right, or right to registration of such rights.
Locations	the addresses specified in the Purchase Order.
Milestone	any milestone specified in a Purchase Order relating to the supply of a Service or a Deliverable.
Moral Rights	has the meaning given to the term in Part IX of the <i>Copyright Act 1968 (Cth)</i> .
Ordering Period	is the period stated in item 1 of Schedule 1.
Panel	the panel for the supply of digitisation services established under [<i>insert details of RFP process</i>].
Panel Member	<ol style="list-style-type: none"> 1 the Contractor; and 2 other Contractors: <p>who have been selected as members of the Panel and have entered into a master digitisation services agreement with the Principal for the provision of services similar to or the same as this agreement.</p>

Term	Meaning
Personal Information	has the meaning given in the PMP or the <i>Privacy and Personal Information Protection Act 1998 (NSW)</i> .
Personnel	of a party means all employees, officers, agents and contractors of that party.
Principal's Material	any material provided by or to which access is given by the Principal to the Contractor for the purposes of this agreement.
Principal's Representative	the person for the time being holding, occupying or performing the duties of the position set out in Item 5 of Schedule 1.
Privacy Management Plan or PMP	the Customer' plan for the management of privacy included in the Purchase Order.
Purchase Order	has the meaning given in clause 4.5(a).
Quote	has the meaning given to that term in clause 4.3(a).
Related Body Corporate	has the meaning given to it in the Corporations Law.
Resources	Personnel, equipment, facilities, infrastructure, systems, procedures, processes and other resources.
Service Levels	the service levels set out in the Purchase Order.
Service Period	the period specified in a Purchase Order for the provision of the Services.
Services	the services to be provided under a Purchase Order.
Specified Personnel	those Personnel identified in the Purchase Order.
Start Date	the date for the commencement of the Services specified in a Purchase Order.
Statement of Requirements	the requirements, specifications and schedule for delivery of the Services set out in Schedule 2 and/or the Purchase Order.

Term	Meaning
Template Purchase Order	is the template Purchase Order set out in Schedule 3
Warranty Period (clause 7.2(c))	the period which: <ol style="list-style-type: none">1 commences on the date the Contractor's Representative notifies the Customer's Representative in writing that the Deliverables are completed and are ready for collection by the Customer; and2 ends 90 days from the date the notification is issued under 1.

Schedule 1 Master Digitisation Services Agreement: Details

Item 1: Term of the agreement	<p>Commencement Date: [Insert Date]</p> <p>Ordering Period: the period commencing on the Commencement Date and terminating five (5) years thereafter.</p>
Item 2: Categories under the Panel	[Insert Service Categories for which the Contractor is registered under the Panel]
Item 3: Eligible Agencies	<p>Eligible Agencies may include:</p> <p>(a) any government sector agency as defined in the <i>Government Sector Employment Act 2013</i> http://www.legislation.nsw.gov.au/maintop/view/inforce/act+43+2002+cd+0+N; or</p> <p>(b) a public body as defined in Clause 6 of the Public Works and Procurement Regulation 2014 that is eligible to become a registered buyer under NSW Government contracts or other supply arrangements which may include:</p> <ol style="list-style-type: none"> (1) a private hospital, (2) a local council or other local authority, (3) a charity or other <i>community non-profit organisation</i>, (4) a private school or college, (5) a university, (6) a public authority of the Commonwealth, any other State or Territory, (7) a public authority of any other jurisdiction (but only if it carries on activities in NSW), (8) a contractor to a public authority (but only in respect of things done as such a contractor). <p><i>A community non-profit organisation does not include an industry association or similar body the activities of which are intended to promote the interests of a particular industry or sector of an industry.</i></p>
Item 4: Reports and documentation	The Contractor must provide the reports to the Principal stipulated in the Statement of Requirements. [Add any other documents, assessments or reports as appropriate and ensure that the SOR includes a template for annual report of orders under the Master Digitisation Services Agreement from the Contractor]
Item 5: The Principal's Representative	The Principal's Representative:
Item 6: Contractor's Representative	<p>Contractor's Representatives:</p> <ol style="list-style-type: none"> 1. Name and contact details: 2. Functions in addition to those specified in clause 3.2:

Item 7: Address for Notices to the Principal	The Principal's Representative: State Library of New South Wales Macquarie Street SYDNEY NSW 2000 Fax: 02 Email:
Item 8: Address for Notices to Contractor	

Schedule 2 Statement of Requirements

The Statement of Requirements is specified in Part D of the Principal's Request for Proposal [*Insert RFP name and No.*] issued on [*insert date*] which is incorporated by reference into this schedule.

Schedule 3 Template Purchase Order

[Notes: Eligible Agencies should review Schedule 2 Statement of Requirements and determine whether it is appropriate to reference that Schedule 2 applies in completing the sections below in this Purchase Order or whether different requirements should be specified.]

Between the parties

Customer **[Insert Eligible Agency's details, ABN, Address]**

Contractor **[Insert Contractor details, ABN, address]**

Purchase Order No. #

This Purchase Order is established under the Master Digitisation Services Agreement between the Library Council of New South Wales ABN 19 665 924 697 and [Insert Contractor's name and ABN] dated [Insert date of the Master Digitisation Services Agreement]

1 Customer's Representative

1.1 The Customer's Representative is:

Name:	
Title:	
Telephone:	
Facsimile:	
Email:	

1.2 The Customer's address for service of notices:

2 Period of Purchase Order

2.1 Start Date (clause 4.2(d))

The Services commence on [insert date].

2.2 Service Period (clause 4.2(e))

The Service period commences on the Start Date and continues until [insert date or when period will end].

3 Specified Personnel

The Specified Personnel are:

Name	Role	Qualifications and Experience

4 Collections' Materials

4.1 Description:

4.2 Inventory [e.g.:

	Item	Item description (condition/other comments)	Quantity
1.			

4.3 Collection Viewing Date and Time:

4.4 Conditions or restrictions on use of the Collections Materials (clause 6.2(c)):

4.5 Handling and preservation:

4.6 Transportation of Collections' Materials:

5 Delivery and return of the Collections' Materials

5.1 Delivery method:

5.2 Condition reports on delivery:

5.3 Return of Collections' Materials to the Principal:

5.4 Condition reports on return:

6 Customer's obligations (clause 9)

6.1 Facilities:

6.2 [Other]:

7 General Services requirements

7.1 Project management:

7.2 Reports and Meetings"

[Include details]

7.3 Location

Location address:

Period for which Collections' Materials will be held at the Location:

[Insert details about storage, environmental conditions, air pollution, lighting, pest management, security]

7.4 Statement of Requirements

[Note: As a default position state that the Services must be performed in accordance with the Statement of Requirements set out in Schedule 2 and the requirements specified in this Purchase Order. If the requirements in Schedule 2 are not appropriate for the engagement then indicate which parts of Schedule 2 do not apply]

7.5 Insurance

[Indicate what will apply or insert Principle/Eligible Agency's own requirements e.g.:

(a) The Customer will arrange insurance for the Collections' Materials: Yes/No [indicate which]

(b) If "No" is indicated in (a) above:

Prior to each shipment the Customer will inform the contractor of the number of shipments and the collection value of each shipment. The Contractor must obtain and maintain an all risks, no exclusions policy of insurance, for the amount of [\$xx] per occurrence approved in writing by the Customer for the period commencing from the time the Contractor takes physical possession of the Collections' Materials from the Customer's transport operator at the time of delivery, until the Customer's transport operator takes possession of the Collections' Materials on behalf of the Customer at time of return.

[Notes: the amount specified above should be the value of each shipment of Collections' Materials. Shipments may overlap, and as such insurance coverage may be required for more than one shipment at a time.]

7.6 Privacy Management Plan

[Insert reference details for the Customer's PMP, e.g. incorporate by reference the document at a link on the Customer's website such as http://www.sl.nsw.gov.au/about/privacy/docs/privacy_management_plan.pdf]

7.7 Training

8 Services and Deliverables

8.1 Scope of Services

[Insert relevant Services descriptions]

8.2 Deliverables

[Insert details of all deliverables to be provided as a result of the Services e.g.:]

Item no.	Item to be digitised	Task/activity	Milestones (any)	Specifications	Deliverable
1.					
2.					
3.					

9 Services Standards/Specifications

[Eligible Agencies should review Schedule 2 and determine whether it is appropriate to reference that Schedule 2 applies in completing this section or whether different requirements should be specified.]

10 Schedule for the delivery of services

10.1 Project schedule

- (a) [Insert schedule for completion of the Services and delivery of the Deliverables]
- (b) Specify:
- (1) Due Dates (clause 7.3(b)): [Insert Due Dates for delivery of Services and Deliverables]
 - (2) Liquidated Damages Rate (clause 7.3(b)): \$AUD [Insert liquidated damages rate]
 - (3) Liquidated Damages cut-off date (number of calendar days after the Due Date) (clause 7.3(b)): [Specify number of days]

11 Service Levels

Service	Customer's responsibility	Contractor's Responsibility	Measure	Minimum KPI

12 Fees and payment terms

- (a) Contractor's Bank Account

Contractor's Bank Account

Bank name and address: [insert bank name and address]

Account name: [insert Account name] Account type: [insert Account type]

BSB: [insert BSB] Account No: [insert Account number]

- (b) The Fee
[Insert details of the Fee and the basis upon which it is calculated]
- (c) Payment Terms
- (1) [Insert details of any progressive payments according to completed Milestones]

- (2) [Insert details of when invoices may be issued e.g. when work is completed in its entirety or when a batch is completed or otherwise or as per clause 10.3]

13 Additional terms and conditions specific to this Purchase Order

(Clause 4.2(f))

13.1 Order of Precedence

(a) [Note under clause 4.5(e), the terms of the Master Digitisation Services Agreement will prevail over any terms and conditions in a Purchase Order that directly conflict with Master Digitisation Services Agreement, unless the Purchase Order expressly provides that the conflicting term or condition supersedes the Master Digitisation Services Agreement.]

(b)

(1)

DATED: [INSERT DATE WHEN SIGNED BY BOTH PARTIES]

EXECUTED AS AN AGREEMENT

This Purchase Order is signed on behalf of
Library Council of New South Wales trading as State Library of NSW by

sign here



Authorised Signatory

print name

Signed for [Contractor's Details]

sign here ►

Authorised Signatory

print name

Master Digitisation Services Agreement signing page

Executed as an agreement

Signed on behalf of

Library Council of New South Wales trading as State Library of NSW by

sign here



Authorised Signatory

print name

sign here



Witness

print name

Signed for [Contractor's Details]

sign here ►

Director / Secretary

print name

in the presence of

sign here ►

Director

print name