

Trove Collaborative Services Agreement (TCSA)

Guide to Terms and Conditions

August 2019

Overview

Background

The National Library of Australia has developed the Trove Collaborative Services Agreement (**TCSA**) to replace a number of existing agreements (such as the Agreement to use the Libraries Australia Services and Digitisation Memorandums of Understanding) that it has with libraries.

Under the TCSA, the NLA will:

- continue to provide all existing Libraries Australia services;
- provide new Trove digital content services;
- provide digitisation services on a fee-for-service basis; and
- establish the Trove Strategic Advisory Committee, which replaces the Libraries Australia Advisory Committee.

Purpose of this guide

The NLA has now commenced the transition process from Libraries Australia to the Trove Collaborative Services. Libraries will transition to the Trove Collaborative Services by reviewing the TCSA and signing the Order Form.

To assist libraries to better understand the TCSA, this guide has been prepared to:

- provide an overview of all the clauses and schedules of the TCSA;
- highlight areas where the TCSA contains similar rights and obligations for your library as under the Libraries Australia agreement and the Digitisation MoUs; and
- highlight areas where the TCSA imposes new rights and obligations for your library compared to the Libraries Australia agreement and the Digitisation MoUs.

While reading this guide, please note the following:

- this guide is intended to provide your library with information only and should not be relied upon as legal advice. Your library should consider obtaining legal advice if you have any questions about the legal effect of any part of the TCSA;
- this guide has been prepared to provide summarised information to your library, and is not a substitute to reading the TCSA; and
- where defined terms from the TCSA are used in this document, they have the same meaning as in the TCSA.

Comparison to other NLA agreements

There are some similarities and some differences between the TCSA and the Libraries Australia agreement and the Digitisation MoUs. The new components for your library include:

- confidentiality, privacy and security obligations;
- the NLA's right of indemnity from your library (which was included in the Libraries Australia agreement but not in the Digitisation MoUs); and
- a requirement to comply with all applicable laws and policies notified to your library by the NLA.

More information about the differences between the TCSA and the Libraries Australia agreement and the Digitisation MoUs can be found in the 'Comparison to other NLA agreements' section.

Guide to the TCSA Terms and Conditions

The table below provides an overview of each clause and Schedule of the TCSA.

CLAUSE	DESCRIPTION
1 (Definitions and Interpretations)	<p>This clause sets out the meaning of the defined terms used in the TCSA.</p> <p>This clause also includes a standard interpretation provision which describes how certain things are to be interpreted. For example, the headings that are used in the TCSA are not to be used to interpret the meaning of the clause to which they relate.</p>
2 (Entire Agreement)	<p>The purpose of this clause is two-fold. First, it states that the whole agreement between the NLA and your library for the Services is outlined in the TCSA (ie the main terms and conditions, Schedules and Order Form). Any preceding agreements, negotiations or discussions that have not been set out in the TCSA will not form part of the TCSA.</p> <p>Second, the clause has the effect of terminating or superseding your library's existing agreements with the NLA that relate to similar services (except for those agreements listed in the Order Form to survive). For most libraries, this means the Libraries Australia agreement or a Digitisation Memorandum of Understanding (or both). This is because the TCSA will replace those superseded or terminated agreements.</p>
3 (Structure of the agreement and priority of documents)	<p>This clause sets out what documents comprise the TCSA. In addition to the terms and conditions, the TCSA also includes:</p> <ul style="list-style-type: none">• the Order Form, which includes details such as the Commencement Date and Pricing Tier and is the document which both parties sign to enter into the TCSA;• the schedules to the terms and conditions; and• any detailed description of the Services on the NLA's website. <p>The clause also specifies which part of the TCSA takes precedence over another part of the TCSA where there is an inconsistency between them.</p>
4 (Duration of TCSA)	<p>This clause specifies the duration of the TCSA.</p>
5 (Services)	<p>This clause outlines the NLA's obligation to provide the services to your library and to recognise and promote your library's contributions.</p> <p>The clause also requires that each party notify the other of any Problem (with a Problem being any disruption to the Services, reduction in the quality of the Services or Security Incident). Your library is required to provide any reasonable assistance requested by the NLA to enable the NLA to assess and rectify Problems.</p> <p>While the NLA will use reasonable efforts to resolve any Problem, the NLA will not be responsible for any loss or damage your library might suffer as a result of an interruption to the Services.</p>

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6 (Trove Partner responsibilities)	<p>This clause outlines the obligations imposed on your library in receiving the Services. These obligations include complying with the NLA's technical standards (as specified in the Order Form), providing the NLA with the information the NLA requires to perform its TCSA obligations, protecting passwords and not engaging in any act that would diminish the value of the Services for the NLA (eg on-selling access to the Services to third parties without the NLA's approval).</p> <p>This clause also states that your library will be responsible for any loss or damage suffered by the NLA as a result of your library's officials, employees, volunteer workers, agents or contractors placing your library in breach of its obligations under the TCSA.</p>
7 (Trove Strategic Advisory Committee)	<p>This clause refers to the establishment of the Trove Strategic Advisory Committee and indicates that the committee will operate as outlined in Schedule 2.</p>
8 (Payment for Services)	<p>This clause details how your library will be charged for the Services. Key points to note are:</p> <ul style="list-style-type: none"> the fee for the Trove Collaborative Services is determined by the Pricing Tier that applies to your library, and is charged annually in advance (and adjusted on a pro rata basis where your library becomes a Trove Partner on a date other than 1 July); Digitisation Services are provided on a fee-for-service basis, and the fees for these services will be set out in a quote prepared by the NLA. The quote will be based on the prices set out in Schedule 5; and your library must pay an invoice within 28 days of receiving the invoice.
9 (Intellectual Property Rights)	<p>This clause deals with the ownership of Intellectual Property Rights and the grant of a licence to the NLA to use material contributed by your library.</p> <p>The ownership of Intellectual Property Rights is not affected by the TCSA — the NLA retains ownership of the Intellectual Property Rights it has in the databases, digital tools and platforms used to deliver the Services, and your library retains the Intellectual Property Rights in the material that the NLA digitises.</p> <p>In relation to the material received by the NLA from your library, your library grants a broad licence to the NLA to use the material for any function specified under section 6 of the <i>National Library Act 1960</i> (Cth). This licence allows the NLA to use the material for purposes related to the delivery of the Services, and allows the NLA to include your material in the national collection via Trove.</p> <p>Lastly, this clause requires your library to warrant that it has used reasonable endeavours to ensure that its provision of data or material to the NLA will not infringe the Intellectual Property Rights or Moral Rights of any person or organisation. The NLA will, in accordance with the Trove Content Inclusion Policy, remove any data or material that is found to infringe the Intellectual Property Rights or Moral Rights of any person or organisation.</p>

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10 (Confidentiality)	<p>This clause requires the NLA and your library to not disclose the Confidential Information of the other party unless the disclosure falls within one of the situations described in clause 10.1. Those situations include where Confidential Information is disclosed:</p> <ul style="list-style-type: none"> • to perform your obligations or exercise your rights under the TCSA; • to internal management to enable effective management or auditing of TCSA-related activities; • by the NLA to the relevant Minister, House or Committee of Parliament, or to another Australian Government agency where this serves the NLA's legitimate interests; and • as required or authorised by law. <p>Where Confidential Information is disclosed, in certain circumstances the party to which the Confidential Information relates can request that the recipient of the information sign a confidentiality undertaking.</p>
11 (Security)	<p>This clause requires:</p> <ul style="list-style-type: none"> • the NLA to comply with all applicable requirements of the Information Security Manual; • your library to ensure that its systems are adequately protected to reduce the risk of a Cyber Attack; and • your library to use reasonable endeavours to prevent any Harmful Code from being introduced by it or any third party under its control into the NLA's systems. <p>This clause also requires that where a party becomes aware that Harmful Code has (or is likely to have) been introduced into the other party's system, it must immediately notify the other party and cooperate with the other party to eliminate the Harmful Code, prevent reoccurrence and rectify any consequences of the Harmful Code.</p>
12 (Privacy)	<p>This clause relates to the handling of Personal Information in relation to the TCSA. Broadly speaking, each party warrants to the other party that it will comply with the <i>Privacy Act 1988</i> (Cth) in its collection, disclosure and use of Personal Information.</p> <p>This clause also requires that the parties work together to ensure that each party complies with applicable privacy laws and to cooperate with the other party to identify any necessary treatments and organisational measures to ensure the security of Personal Information and prevent any unauthorised modification, misuse, loss or disclosure of Personal Information.</p>
13 (Indemnity)	<p>This clause requires your library to indemnify the NLA, its officers, employees, volunteer workers, agents and contractors against losses that they reasonably sustain as a result of a claim made or threatened by a third party (ie a party that is not the NLA or your library) in relation to:</p> <ul style="list-style-type: none"> • your library's breach of the TCSA; or • any wilfully wrongful (ie deliberate), unlawful or negligent act or omission by your library or your library's officers,

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	<p>employees, volunteer workers, agents or subcontractors in using the Services.</p> <p>Where the NLA's officers, employees, volunteer workers, agents or contractors have suffered loss, the NLA may enforce the indemnity in this clause on their behalf.</p> <p>Your library's obligation to indemnify the NLA will be reduced to the extent that your library can substantiate that the NLA's loss was contributed to by a wilfully wrong, unlawful or negligent act of the NLA, its officers, employees, volunteer workers, agents or contractors.</p>
14 (Termination)	<p>This clause specifies that the TCSA can be terminated either for convenience or default.</p> <p>Either party can terminate the TCSA for convenience by giving the other party 60 days' notice. This means a party can terminate the TCSA without the other party being in breach of the TCSA (eg a party can terminate where it wishes to no longer receive the Services and the other party has not breached the TCSA). Where:</p> <ul style="list-style-type: none"> • your library terminates the TCSA for convenience, your library will not be entitled to a refund of any prepaid fees; and • the NLA terminates the TCSA for convenience, your library will be entitled to a refund of prepaid fees that relate to Services which have not been provided. <p>Either party can also terminate the TCSA immediately where the other party is:</p> <ul style="list-style-type: none"> • in breach of the TCSA and has not remedied the breach within 14 days of receiving notice to do so; or • in material breach of the TCSA and that breach cannot be remedied. <p>Lastly, if the TCSA is terminated, all rights granted to your library under the TCSA will be terminated and the NLA may suppress metadata and information specific to your library.</p>
15 (Dispute resolution)	<p>This clause specifies how disputes relating to the TCSA are to be handled. The parties must (other than proceedings for urgent interlocutory relief) follow the process in this clause before initiating arbitration or court proceedings.</p> <p>In summary, the dispute process involves:</p> <ul style="list-style-type: none"> • a party providing notice to the other party of the dispute; • each party uses reasonable efforts to resolve the dispute within the 14 day period after notice is given; • if the dispute has not been resolved within 14 days, the dispute is escalated to senior management and the parties must use reasonable efforts to resolve the dispute within 30 days of the dispute being referred to senior management; and • if the dispute is still unresolved, either party may give notice to the other party to terminate the dispute process. <p>While the dispute is subject to the dispute process, both parties must continue to perform their obligations under the TCSA. Each party must pay its own costs in relation to the dispute process, and any</p>

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	information disclosed during the process must be kept confidential and only used to resolve the dispute.
16 (Compliance with law and policy)	This clause requires each party to comply with all applicable laws and any applicable policies specified in the Order Form.
17 (Variation)	This clause requires that any variation to the TCSA must be in writing and signed by the parties for the variation to be effective.
18 (Negation of employment, partnership, agency)	<p>This clause clarifies that your library will not be an representative, trustee, employee or partner of the NLA as a result of entering into the TCSA, and must not represent itself as such.</p> <p>Your library will also have no power or authority to assume any obligation or responsibility on behalf of the NLA.</p>
19 (Notices)	This clause requires any notice to be in writing, sent electronically to the address outlined in the Order Form and signed by a person duly authorised by the sender.
20 (Severability)	This clause states that if any term of the TCSA is illegal or unenforceable, that term may be removed and the TCSA will operate without that term.
21 (Survival)	This clause states that the clauses relating to Intellectual Property Rights, confidentiality, security, privacy and the indemnity will survive the termination or expiry of the TCSA.
22 (Governing law)	This clause states that the laws of the Australian Capital Territory govern the TCSA and any dispute that arises in connection with the TCSA will be dealt with by the ACT courts.
Schedule 1 (Trove Collaborative Services)	<p>This Schedule sets out the services that the NLA will provide your library as part of the Trove Collaborative Services. These services include all existing Libraries Australia services and new Trove digital content services.</p> <p>Please note that the NLA:</p> <ul style="list-style-type: none"> • may improve or modify operational or technical aspects of the Services as required to maintain the efficiency or effectiveness of the Services; • may amend, remove or suppress data or material contributed by your library (including digitised material) under certain circumstances, such as where it is required for legal reasons and where it is done to give effect to indigenous cultural and intellectual property protocols; and • will use reasonable endeavours to meet or exceed its targets for service availability, take reasonable steps to notify your library in advance of scheduled outages and seek to schedule outages outside business hours.
Schedule 2 (Trove Strategic Advisory Committee)	<p>This Schedule provides details on:</p> <ul style="list-style-type: none"> • the structure and responsibilities of the Trove Strategic Advisory Committee;

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	<ul style="list-style-type: none"> the election, appointment and replacement of Committee members; the Chair's role; Committee meetings and recommendations developed by the Committee; and the handling of confidential information by Committee members.
Schedule 3 (Digitisation Services)	<p>This Schedule specifies the Digitisation Services that your library can order from the NLA. Two services are available — a Standard Digitisation Service and Optional Digitisation Services.</p> <p>Your library can order one or both of these services by completing the Digitisation RFQ Form contained in Schedule 4. The NLA will then prepare a quote for the requested service based on the fees set out in Schedule 5.</p> <p>If your library accepts the NLA's quote, the NLA will perform Digitisation Services for your library in accordance with the quote and the TCSA. Your library acknowledges that the NLA will perform the Digitisation Services on the understanding that:</p> <ul style="list-style-type: none"> the NLA will provide unrestricted public access to the digitised source material through Trove; where the source of the digitised content (for instance, the original title) is still in copyright, your library must negotiate and document reproduction licence and permission with the copyright owners; and the NLA has the right to manage the digitised content for access in whatever way it considers appropriate.
Schedule 4 (Digitisation RFQ Form)	<p>This Schedule includes the Digitisation RFQ Form that your library needs to complete if it wishes to order Digitisation Services from the NLA. Once your library has submitted a completed Digitisation RFQ Form to the NLA, the NLA will prepare a quote based on the information provided on the form and the fees set out in Schedule 5.</p>
Schedule 5 (Fees)	<p>This Schedule sets out the pricing for the Trove Collaborative Services, Digitisation Services and Libraries Australia Supplementary Services. Please note the following:</p> <ul style="list-style-type: none"> the Pricing Tier that applies to your library will be specified in the Order Form; pricing for Optional Digitisation Services and certain Standard Digitisation Services (eg where your library requests more than 100,000 pages to be digitised) will be determined by the NLA on a case by case basis; there may be a discrepancy between what the NLA specifies in its quote for Digitisation Services and the final amount invoiced to your library as the quote is based on page estimates; and where: <ul style="list-style-type: none"> the actual number of pages to be digitised is 10 per cent or more than the page estimate listed in the quote; or

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	<ul style="list-style-type: none"> the NLA digitising the actual number of pages will exceed any budget constraint specified by your library in the Digitisation RFQ Form, <p>the NLA will stop digitising upon reaching the specified budget constraint or (where no budget is specified) upon reaching the amount specified in the NLA's quote, and contact your library to determine whether any additional digitisation work will be performed.</p>

Comparison to other NLA agreements

Libraries Australia Agreement

The table below provides an overview of:

- the rights and obligations for your library in the Libraries Australia agreement that are also contained in the TCSA; and
- the rights and obligations for your library in the TCSA that are new compared to the Libraries Australia agreement.

WHAT IS THE SAME/SIMILAR	WHAT IS NEW
<ul style="list-style-type: none"> • All existing Libraries Australia services will be offered under the TCSA. • Your library must not engage in activities that will diminish the value of the Services. • Your library must pay the GST payable on the Services. • Your library grants a broad licence for the NLA to use material that the NLA receives from your library. • Your library is responsible for any breach by your library's employees, agents, and contractors of your library's obligations. • Your library will indemnify the NLA, its officers, employees and agents for losses reasonably sustained or incurred by them as a result of a third party claim in relation to any wilfully wrongful (ie deliberate), unlawful or negligent act of your library or its officers, employees, agents and subcontractors. • Either party can terminate for convenience with two months' notice. • Except for urgent interlocutory relief, the parties must attempt to resolve a dispute before initiating court proceedings. • Your library's obligations in relation to the Libraries Australia Document Delivery Payment Service is the same as in the Libraries Australia agreement. 	<ul style="list-style-type: none"> • Your library must notify the NLA if it becomes aware of a Problem, and provide any assistance reasonably required by the NLA to allow the NLA to assess and rectify the Problem. • In receiving the Services, your library must comply with the responsibilities outlined in clause 6 (eg comply with the technical standards outlined in the Order Form and the policies relating to the use of Trove, provide information as required by the NLA and participate in elections of the Trove Strategic Advisory Committee). • In addition to being responsible for breaches committed by your library's employees, agents and contractors, your library will also be responsible for the breaches of your library's officials and volunteers. • Invoices are now payable within 28 days of receipt of the invoice instead of 14 working days. • Your library warrants that it will use reasonable endeavours to ensure that its provision of data or material to the NLA under the TCSA will not infringe the Intellectual Property Rights or Moral Rights of any person or organisation. • Any data or material provided by your library that is found to infringe the Intellectual Property Rights or Moral Rights of any person or organisation will be removed from Trove in accordance with the NLA's Trove Content Inclusion Policy. • The confidentiality obligations in clause 10. • The security obligations in clause 11. • The privacy obligations in clause 12. • The indemnity is slightly broader than in the Libraries Australia agreement as it covers

WHAT IS THE SAME/SIMILAR	WHAT IS NEW
	<p>the NLA's volunteer workers and contractors, and covers third party claims arising out of your library's breach of contract.</p> <ul style="list-style-type: none"> • The NLA can no longer terminate for default for any breach of contract, but can only terminate for the breaches specified in clause 14.2. • Your library can terminate for default immediately under clause 14.2, which is shorter than the 40 working day notice period in the Libraries Australia agreement. • The dispute resolution process is more prescriptive in how a dispute is to be resolved than the Libraries Australia agreement (eg it requires the parties to refer the dispute to senior management if the dispute is not resolved within 14 days). • Your library must comply with all applicable laws and any applicable policies set out in the Order Form.

Digitisation Memorandum of Understanding

The table below provides an overview of:

- the rights and obligations for your library in the Digitisation MoU that are also contained in the TCSA; and
- the rights and obligations for your library in the TCSA that are new compared to the Digitisation MoU.

WHAT IS THE SAME/SIMILAR	WHAT IS NEW
<ul style="list-style-type: none"> • Your library must provide copyright permissions to the source material to be digitised. • Your library must pay the GST payable on the Digitisation Services. • In the event of a dispute, each party must attempt to resolve the dispute and refer the dispute to senior management if the dispute is not resolved. • The NLA will provide unrestricted public access to digitised material on Trove. • Where the source material that is to be digitised is still in copyright, your library must negotiate and document reproduction licence and permission with the copyright owners. 	<ul style="list-style-type: none"> • Unlike the Digitisation MoU, the TCSA is legally binding. • Your library must notify the NLA if it becomes aware of a Problem, and provide any assistance reasonably required by the NLA to allow the NLA to assess and rectify the Problem. • In receiving the Services, your library must comply with the responsibilities outlined in clause 6 (eg comply with policies relating to the use of Trove, provide information as required by the NLA and participate in elections of the Trove Strategic Advisory Committee). • Your library will be liable for any loss suffered by the NLA that is caused by a breach by your library's officials, employees,

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<ul style="list-style-type: none"> • The NLA has the right to manage the content for access in whatever way it considers appropriate. • The NLA may remove or suppress digitised content for legal reasons. • Your library requests Digitisation Services by obtaining a quote from the NLA, and the NLA will perform the Digitisation Services upon your library's acceptance of the quote. • Variations to the TCSA must be made in writing. 	<p>volunteer workers, agents or contractors of an obligation of your library under the TCSA.</p> <ul style="list-style-type: none"> • Invoices are now payable within 28 days of receipt of the invoice instead of 14 days. • In general, the NLA will not provide an invoice to your library prior to commencing the digitisation work based on the best estimate of the number of pages to be processed. Invoices will be issued in arrears unless negotiated otherwise. • The NLA will stop digitisation work and consult your library if: <ul style="list-style-type: none"> ○ the actual number of pages to be digitised is 10 per cent or more than the page estimate listed in the NLA's quote; or ○ completing the digitisation would exceed any budget constraint specified in the Digitisation RFQ form. • The licence granted by your library to the NLA to use the Intellectual Property Rights in the material provided by your library is broader — the NLA's licence to use your library's material is not limited to using the material to perform the NLA's contractual obligations, but includes using the material for any NLA function specified under section 6 of the <i>National Library Act 1960</i> (Cth) (which includes allowing the NLA to include the digitised content as part of its national collection). • Your library warrants that it will use reasonable endeavours to ensure that its provision of data or material to the NLA under the TCSA will not infringe the Intellectual Property Rights or Moral Rights of any person or organisation. • Any material provided by your library that is found to infringe the Intellectual Property Rights or Moral Rights of any person or organisation will be removed from Trove in accordance with the NLA's Trove Content Inclusion Policy. • The confidentiality obligations in clause 10. • The security obligations in clause 11. • The privacy obligations in clause 12. • The indemnity in clause 13. • Your library needs to give 60 days' notice to terminate the TCSA for convenience, and

WHAT IS THE SAME/SIMILAR	WHAT IS NEW
	<p>there will be no refund of any prepaid fees if your library exercises this right.</p> <ul style="list-style-type: none"> • Your library can terminate the TCSA immediately for default in accordance with clause 14. • Your library must comply with all applicable laws and any applicable policies set out in the Order Form. • Notices are to be electronic only, and must be signed by a person duly authorised by the sender.