



Digitisation Services Agreement

National Library of Australia (NLA)

and

<insert> (Customer)

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Digitisation Services Agreement

Parties

Name National Library of Australia ABN 28 346 858 075, a body corporate established by the *National Library Act 1960* (Cth) of Parkes Place, Canberra, Australian Capital Territory

Short form name **NLA**

Name <insert> ABN <insert> of <insert address>

Short form name **Customer**

Recitals

- A. The Customer wishes to digitise materials or make them accessible on Trove (or both).
- B. The NLA will digitise or make available on Trove (or both) the materials nominated by the Customer on the Digitisation RFQ Form on the terms and conditions set out in this agreement. All material that is digitised or made available on Trove under this agreement will form part of the national collection.

Operative provisions

Part 1 — General terms and conditions

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used.

Agreement means this agreement between the NLA and the Customer, as amended from time to time.

Agreement Details means the details set out in Schedule 1.

Commencement Date means the date on which this Agreement commences, as specified in item 2 of the Agreement Details.

Customer means the party specified as such in item 1 of the Agreement Details and, where the context permits, includes the party's officers, employees, volunteer workers, agents and contractors.

Customer Contact Person means the person identified as such in item 3 of the Agreement Details.

Digitisation RFQ Form means the form contained in Schedule 3.

GST has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means any and all intellectual property rights anywhere in the world (including present and future intellectual property rights) including rights in respect of or in connection with:

- (a) confidential information, know-how or any right to have information kept confidential;
- (b) copyright (including future copyright and rights in the nature of or analogous to copyright);
- (c) trade marks, service marks and other related marks; and
- (d) all associated goodwill,

whether or not existing at the Commencement Date and whether or not registered or registrable and includes any and all variations, modifications or enhancements to each of them together with any application or right to apply for registration of those rights and includes all renewals and extensions.

Moral Right means each and every 'moral right' as defined in the *Copyright Act 1968* (Cth).

National Library of Australia or **NLA** means the body corporate established by the *National Library Act 1960* (Cth).

Optional Digitisation Services means the services specified in paragraph 1.2 of Schedule 2.

Personal Information has the meaning given to it in the *Privacy Act 1988* (Cth).

Problem means any disruption to the Services or reduction in the quality of the Services.

Services means the services specified in Schedule 2.

Standard Digitisation Service means the service specified in paragraph 1.1 of Schedule 2.

Terms and Conditions means clauses 1 to 19 of this Agreement.

1.2 Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) headings are for ease of reference only and do not affect interpretation;
- (b) singular includes the plural and vice versa;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a document or instrument including any referred to by a web address includes the document or instrument as novated, altered, supplemented or replaced including at a new web address from time to time;
- (e) a reference to time is to the time in the place where the obligation is to be performed;
- (f) a reference to a party is to a party to this Agreement and includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (g) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

- (h) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (i) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (j) the meaning of general words is not limited by specific examples and the word 'includes' in any form is not a word of limitation.

2. Entire Agreement

2.1 Entire Agreement in relation to delivery of the Services

This Agreement:

- (a) documents the entire agreement between the parties in relation to the delivery of the Services; and
- (b) supersedes or terminates all other agreements (whether legally binding or otherwise) relating to the Services or services substantially similar to the Services between the NLA and the Customer.

3. Priority of documents

3.1 Priority of documents

For the purposes of this Agreement, if there is any inconsistency between any of the documents mentioned below, a document higher in the following list prevails over a document lower in the list to the extent of any inconsistency:

- (a) the Terms and Conditions;
- (b) the Schedules; and
- (c) any attachments to the Schedules.

4. Duration of Agreement

4.1 Agreement period

This Agreement commences on the Commencement Date and (unless otherwise lawfully terminated) continues until 30 June 2022.

Part 2 — Services and obligations

5. Services

5.1 Service obligations

- (a) The NLA must supply the Services in accordance with Schedule 2 and with due skill and care.
- (b) The NLA acknowledges that the contributions made by the Customer under or in connection with this Agreement play an important part in achieving the objectives of

the Services. The NLA will recognise and promote the Customer's contributions as set out in Schedule 2.

- (c) The Customer agrees that while the NLA will use reasonable endeavours to resolve Problems (including by working with third parties to resolve Problems), the NLA may temporarily suspend services without notice and will not be liable for any Service interruption.

5.2 Problems

- (a) The parties will notify each other promptly after becoming aware of a Problem.
- (b) In the event of a Problem, the NLA will use reasonable endeavours to rectify the Problem, which includes working with the NLA's third party suppliers to resolve Problems where applicable.
- (c) The Customer must promptly provide any assistance reasonably required by the NLA to enable the NLA to assess and rectify a Problem by relaying information to or carrying out instructions from the NLA.

6. Customer responsibilities

6.1 Responsibilities

- (a) In receiving the Services, the Customer will:
 - (i) comply with the NLA's technical standards as specified in the Agreement Details or as advised by the NLA from time to time; and
 - (ii) provide information as required to enable the NLA to meet its obligations under this Agreement, including by providing copyright and access permissions, contact details, and logos in accordance with the standards specified by the NLA in writing.
- (b) The Customer acknowledges that it is liable for:
 - (i) any breach by an officer, employee, volunteer worker, agent or contractor of the Customer of an obligation of the Customer under this Agreement; and
 - (ii) any loss or damage sustained or incurred by the NLA that is caused by any breach referred to in clause 6.1(b)(i).

7. Payment for Services

7.1 Fees

The fees that the NLA will charge for the Services will be set out in a quote prepared by the NLA pursuant to paragraph 3.1(b) of Schedule 2. The quote will be based on the fees set out in Schedule 4 and the information provided by the Customer in the Digitisation RFQ Form.

7.2 GST on Services

- (a) Unless otherwise specified, any fee payable by the Customer for any Services supplied under this Agreement is expressed exclusive of GST.
- (b) The Customer will, on receipt of a tax invoice, pay the NLA an amount equal to the GST liability payable (if any) by the NLA on the supply of the relevant Services within 28 days of receiving the invoice.

7.3 **NLA to provide invoice**

The NLA must provide correctly rendered invoices to the Customer.

7.4 **Payment obligation**

The Customer must pay a correctly rendered invoice that is in accordance with the requirements of this Agreement within 28 days of receipt of the invoice.

Part 3 — Information management

8. Intellectual Property Rights

8.1 Intellectual Property Rights

- (a) All material that is contributed to the NLA, or created, by the Customer under this Agreement will form part of the NLA's national collection.
- (b) Title to, and ownership of, all Intellectual Property Rights in any material that is digitised pursuant to Schedule 2 is unaffected by this Agreement.
- (c) The Customer grants the NLA a royalty-free, perpetual, irrevocable, world-wide, non-exclusive licence to use (including the right to sublicense) any material that the NLA receives from the Customer under or in connection with this Agreement for any NLA function under section 6 of the *National Library Act 1960* (Cth) including any use related to the delivery of the Services.
- (d) The Customer warrants that it will use reasonable endeavours to ensure that its provision of material to the NLA for the purpose of the NLA performing the Services will not infringe the Intellectual Property Rights or Moral Rights of any person or organisation. Any material provided by the Customer 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 (as amended or replaced from time to time).

9. Privacy

9.1 Privacy obligations of each party

- (a) Each party:
 - (i) acknowledges that the supply of Services may involve the collection, use or disclosure of Personal Information by either party; and
 - (ii) undertakes to work collaboratively with the other party to ensure that in the course of performing or receiving the Services all Personal Information is protected and each party complies with applicable privacy laws.
- (b) Each party warrants to the other party that:
 - (i) any Personal Information to be used in the performance or receipt of the Services has or will be collected with appropriate consent from and notification provided to the affected individual;
 - (ii) where it provides Personal Information to the other party or a third party in order to perform or receive the Services, the disclosure of the Personal Information is authorised by either the consent of the individual or another legal basis; and

- (iii) it will not use the Personal Information it receives in the course of performing or receiving the Services for any purpose other than the purpose for which the Personal Information was collected unless such use is authorised by law.
- (c) Each party must 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.

Part 4 — Risk management

10. Indemnity

10.1 Customer indemnity

- (a) The Customer indemnifies the NLA, its officers, employees, volunteer workers, agents and contractors (**those indemnified**) against losses reasonably sustained or incurred by any of those indemnified as a result of any claim made or threatened by a third party in relation to:
 - (i) a breach of this Agreement; or
 - (ii) any wilfully wrongful, unlawful, or negligent act or omission of the Customer, or its officers, employees, volunteer workers, agents or subcontractors.
- (b) The NLA may enforce the indemnity in clause 10.1 in favour of the persons specified in clause 10.1 for the benefit of each such person in the name of the NLA or of such person.
- (c) The Customer's indemnity in this clause 10 will be reduced to the extent that the loss was contributed to by the wilfully wrongful, unlawful or negligent act of the NLA, its officers, employees, volunteer workers or contractors (except the Customer), as substantiated by the Customer.

11. Termination

11.1 Termination for convenience

Either party may, at any time, by giving not less than 60 days' notice, terminate this Agreement.

11.2 Termination for default

Either party may by notice to the other party terminate this Agreement with immediate effect if any of the following apply:

- (a) the other party is in breach of this Agreement and the other party has not cured the breach within 14 days of being required to do so in a notice from the notifying party; or
- (b) the other party is in material breach of this Agreement and the breach cannot be cured.

11.3 Effect of termination

Subject to clause 18, immediately upon the termination or expiry of this Agreement, all rights granted to the Customer under this Agreement are terminated.

12. Dispute resolution

12.1 No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Agreement (**Dispute**), a party must comply with this clause 12 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). If a party has sought or obtained any urgent interlocutory relief that party must then follow this clause 12.

12.2 Notification

A party claiming a Dispute has arisen must give the other party to the Dispute notice setting out details of the Dispute.

12.3 Parties to resolve Dispute

- (a) During the 14 days after a notice is given under clause 12.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute before referring it to senior management of the parties.
- (b) If the Dispute cannot be resolved under clause 12.3(a), the parties must escalate the Dispute to the senior management level. The parties must use reasonable efforts to resolve the Dispute within 30 days of the Dispute being referred to senior management.
- (c) Despite the existence of a Dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform their obligations under this Agreement.

12.4 Confidentiality

Any information or documents disclosed by a party under this clause 12:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

12.5 Costs

Each party to a Dispute must pay its own costs of complying with this clause 12.

12.6 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to the other party after it has complied with clauses 12.1 to 12.3. Clauses 12.4 and 12.5 survive the termination of the dispute resolution process.

Part 5 – Law and Policy

13. Compliance with law and policy

13.1 General obligation

Each party must, in performing its obligations under this Agreement, comply with all applicable laws and any applicable policies set out in Schedule 1.

Part 6 – Miscellaneous

14. Variation

14.1 Variation to be in writing

Unless otherwise specified in this Agreement, no variation of this Agreement will be binding on the parties unless it is in writing and signed by them.

15. Negation of employment, partnership or agency

15.1 No employment, partnership or agency

The Customer:

- (a) is not an agent, representative, trustee, employee or partner of the NLA by virtue of this Agreement and must not represent itself as such in any circumstances; and
- (b) has no power or authority to act for or to assume any obligation or responsibility on behalf of the NLA.

16. Notices

16.1 Notices to be in writing

A notice must be in writing, transmitted electronically to the address set out in the Agreement Details and signed by a person duly authorised by the sender.

17. Severability

17.1 Severability of terms

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

18. Survival

18.1 Terms that survive termination or expiry

The following clauses survive the termination or expiry of this Agreement: clause 8 (Intellectual Property Rights), clause 9 (Privacy) and clause 10 (Indemnity).

19. Governing Law

19.1 Governing law and jurisdiction

This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

Executed as an agreement.

Executed by the NLA in the presence of:)
)
)
)
)
)

.....
Signature of witness

.....
(Print) Name of witness

.....
Signature of delegate

.....
(Print) Full name and position of delegate

Date:

Executed by <the Customer> in the presence)
of:)
)
)
)
)

.....
Signature of witness

.....
(Print) Name of witness

.....
Signature of authorised representative

.....
(Print) Full name and position of authorised
representative

Date:

Schedule 1 — Agreement Details

Item Number	Description	Terms and Conditions Clause Reference	Details
1.	Customer	CI 1.1	<insert name and ABN>
2.	Commencement Date	CI 1.1	<insert>
3.	Customer Contact Person	CI 1.1	<insert position of Customer Contact Person> <insert contact email and phone>
4.	Address for notices and questions	CI 16	NLA: <insert email address for notices> Customer: <insert email address for notices>
5.	Applicable Policies	CI 13	<ul style="list-style-type: none"> • NLA Trove Content Inclusion Policy; • NLA Collection Digitisation Policy; • NLA Collection Development Policy; and • Takedown Procedure.
6.	NLA technical standards	CI 6.1(a)(i)	NLA digitisation standards for (as applicable): <ul style="list-style-type: none"> • journals; and • newspapers.

Schedule 2 — Services

1. Digitisation Services

1.1 Standard Digitisation Service

The Customer may, in accordance with paragraph 3, request the NLA to provide the Standard Digitisation Service, which comprises:

- (a) assistance in the identification and sourcing of the best copy of the source material for digital capture;
- (b) transportation of the source material including insurance of material while it is in the NLA's possession or at the premises of an NLA-approved service provider;
- (c) digital capture (ie scanning) of the source material;
- (d) optical character recognition (OCR) processing of the source material to support enhanced discovery on Trove;
- (e) quality assurance of the scanned source material and OCR processing;
- (f) enabling discovery of the source material in Trove;
- (g) enabling delivery in Trove;
- (h) enabling long-term access in Trove; and
- (i) promotion of the digitised material.

1.2 Optional Digitisation Services

The Customer may, in accordance with paragraph 3, request the NLA to provide a quote to provide the following Optional Digitisation Services:

- (a) priority service for where the Customer requires content within a specific timeframe;
- (b) rights investigation;
- (c) supply of digital files - TIFFs / bookmarked PDFs with OCR if one of the following conditions are met:
 - (i) the Customer is the copyright holder;
 - (ii) the content is out of copyright;
 - (iii) the copyright holder provides permission; or
 - (iv) copyright is unknown or unable to be established following reasonable investigation by the Customer;
- (d) additional (non-NLA standard) technical metadata; and
- (e) customised promotion/launch plan.

2. Effect of digitisation

2.1 Customer acknowledgement

The Customer acknowledges that the NLA will undertake digitisation of source materials on the understanding that:

- (a) the NLA will provide unrestricted public access to the source material through Trove;
- (b) where the source of the content (for instance, the original title) is still in copyright, the Customer must negotiate and document reproduction licence and permission with the copyright owners; and
- (c) the NLA has the right to manage the content for access in whatever way it considers appropriate.

2.2 Amendment, removal or suppression of material

The Customer agrees that the NLA may amend, remove or suppress material that is digitised pursuant to this Schedule 2 where the amendment, removal or suppression:

- (a) is required for legal reasons;
- (b) is sought in a takedown request and the NLA, having regard to the principles outlined in the National and State Libraries Australia's position statement on takedowns, considers the takedown request to be appropriate; or
- (c) is done to give effect to indigenous cultural and intellectual property protocols as applicable from time to time.

3. Ordering Digitisation Services

3.1 Process

- (a) The Customer may submit a Digitisation RFQ Form to request a quote from the NLA for the provision of the Standard Digitisation Service and the Optional Digitisation Services (if applicable).
- (b) Upon receiving a Digitisation RFQ Form, the NLA will send an email quote to the Customer Contact Person setting out the fee that the NLA will charge to perform the requested Service based on:
 - (i) the information provided on the Digitisation RFQ Form by the Customer; and
 - (ii) the fees set out in Schedule 4.
- (c) If the Customer accepts the quote provided by the NLA pursuant to paragraph 3.1(b), the NLA will provide the requested Service in accordance with the quote and this Agreement.

Schedule 3 – Digitisation RFQ Form



Digitisation Request for Quote Form

The Customer is to complete and submit this Digitisation RFQ Form to the NLA where it wishes to use the Services.

Description	Details
Customer's name	<insert Customer's name and ABN>
Customer contact person details	<p><Insert the details of a contact person who the NLA should contact in relation to the Services and to whom invoices will be sent></p> <p>Name: <insert></p> <p>Address: <insert></p> <p>Email: <insert></p> <p>Telephone: <insert></p>
Material covered by this Order	<p><Insert details of material to be digitised, including:</p> <ul style="list-style-type: none"> • the format of the source material (eg book, journal, newspaper, pamphlet, microfilm or hard copy); • if the source material is not microfilm, a physical description of the item(s) including dimensions, fragility, fold-outs and colour plates; • the title of the source material (if applicable); • date ranges; • whether the source material is complete and suitable for digitisation; and • the language(s) contained in the source material>

Description	Details
Location of source material if known	<insert>
Borrowing and copyright permissions	<p data-bbox="794 338 1433 461"><If the source material is borrowed, please confirm that the lending institution has agreed to lend the material for the purpose of it being digitised into Trove></p> <p data-bbox="794 495 1433 584"><Please confirm that copyright permission from the copyright owner has been given where the source material is still in copyright></p>
Number of pages to be digitised if known	<Please estimate the number of pages (single sided, including covers) that are required to be digitised>
Required completion date	<If the Customer requires the digitisation to be completed by a certain date, insert that date here>
Maximum budget	<If the Customer has a budgeted amount it cannot exceed, please insert that GST inclusive amount here. Please note the page prices in Schedule 4 are exclusive of GST. Otherwise, write 'N/A'>
Request for Optional Digitisation Services	<If the Customer requires any Optional Digitisation Services described in paragraph 1.2 of Schedule 2, please list them here>

Schedule 4 — Fees

1. Digitisation Fees

1.1 Standard Digitisation Service Fees

- (a) Unless one or more of the circumstances described in paragraph 1.1(b) apply, the NLA's quote for the Standard Digitisation Service will be based on the prices below:

Print — Price per page (ex GST)			Microform — Price per page (ex GST)		
Book	Journal	Newspaper	Book	Journal	Newspaper
\$2.90	\$2.95	\$2.50	\$2.70	\$2.75	\$1.75

- (b) The NLA will provide the Customer with pricing determined on a case by case basis in its quote for the Standard Digitisation Service where:
- (i) the Customer requests the digitisation of more than 100,000 pages;
 - (ii) the Customer requests the digitisation of complex source materials that require specialised scanning such as colour critical content, fragile documents, complex fold-outs, and oversize documents;
 - (iii) OCR processing of source material in non-Roman alphabet is required;
 - (iv) ingest or conversion (or both) of the Customer's digital files into a format suitable for delivery on Trove is required as those files do not adhere to the NLA's technical standard;
 - (v) preservation treatment is required for digitisation; and
 - (vi) the creation of catalogue records is required.

1.2 Optional Digitisation Services Fees

The NLA will determine pricing for the Optional Digitisation Services on a case by case basis, and the price will be included in a quote prepared by the NLA pursuant to paragraph 3.1(b) of Schedule 2.

1.3 Cost variations between quote and invoice

- (a) The parties acknowledge that quotes provided by the NLA pursuant to paragraph 3.1(b) of Schedule 2 are based on page estimates of the source material that is to be digitised, and accordingly there may be a discrepancy between the price quoted by the NLA and the amount invoiced to the Customer due to discrepancies between the page estimate and the actual number of pages scanned.
- (b) If, during the course of performing the Services, the NLA discovers that:
- (i) the actual number of pages that are required to be digitised is 10 per cent or more than the page estimate listed in its quote; or
 - (ii) digitising the actual number of pages required by the Customer will exceed any budget constraint specified by the Customer in its Digitisation RFQ Form,

the NLA will stop digitising the Customer's source material upon reaching the specified budget constraint, or where no budget constraint is specified, upon reaching the amount specified in the NLA's quote, and contact the Customer to determine whether any additional digitisation work will be performed.