



Trove Collaborative Services
Partnership Agreement
Terms and Conditions

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Trove Collaborative Services Terms and Conditions

Purpose of Terms and Conditions

These Terms and Conditions become part of a Trove Collaborative Services Agreement (TCSA) between the National Library of Australia (NLA) and the Trove Partner upon the parties executing a Trove Collaborative Services Order Form.

Recitals

- A. The NLA provides Australian libraries, cultural and research institutions with a range of digital services and access to various online platforms, which currently include Trove Collaborative Services and various digitisation, content access and web archiving services. These services have been covered by a range of different agreements to date.
- B. As these platforms and services evolve they are becoming increasingly interconnected and dependent on essential shared infrastructure, namely, the Trove content, access and delivery platform.
- C. Accordingly, the parties recognised the need for a new collaborative framework for delivery and development of NLA's digital services, which allowed for a new consolidated fee structure and increased consultation with Trove Partners under the Trove Collaborative Services Partnership Agreement 2019 – 2022.
- D. The Trove Collaborative Services suite of Services continues to evolve and expand due to industry demands and as such the definition of Trove Partner has expanded to include organisations that contribute to and benefit from the Trove content, access and delivery platform.
- E. The Trove Collaborative Services Partnership Agreement beginning July 2022 is an ongoing agreement with automatic annual renewal unless otherwise notified in writing by either the NLA or the Trove Partner.
- F. Under this agreement, the NLA offers Trove Partners a range of services in relation to its digital platforms and tools such as Trove, and optional digitisation services at a Trove Partner rate. All material that is contributed to the NLA, or created, by the Trove Partner under this agreement will form part of the national collection.
- G. The parties agree to adopt this partnership framework, which will replace the existing range of agreements, on the terms and conditions set out in this Trove Collaborative Services Agreement.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

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

Agreement Period means the period of time from the commencement date on the Order Form until written notification of termination of agreement is provided in accordance with clause 14.

Commencement Date means the date on which the TCSA commences, as specified in the Order Form.

Confidential Information means information that is by its nature confidential and:

- (a) is described in the Order Form or elsewhere in the TCSA as Confidential Information;
- (b) is agreed by the parties to be confidential;
- (c) a party knows or ought to know is confidential; or
- (d) is designated by the NLA as confidential,

but does not include information that:

- (e) is or becomes public knowledge other than by breach of the TCSA or by any other unlawful means;
- (f) is in the possession of the Trove Partner without disclosure restrictions before it was provided by NLA to the Trove Partner; or
- (g) has been independently developed or acquired by that party.

Cyber Attack means any action taken through the use of computer networks or any unauthorised access to or use of a computer system that is intended to have, is likely to have or does have an adverse effect on the security or reliability of data on the system or the accessibility of the system, and includes denial of service attacks.

Digitisation RFQ Form means the form as found on the Trove Website at [Digitisation RFQ Form](#).

Digitisation Services means the services specified in Schedule 1.11.

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

Harmful Code means any virus, denial of service, disabling or malicious device or code, 'worm', 'trojan', 'time bomb', or other harmful or destructive code, but does not include any technical mechanism that is included to manage the proper use of any software.

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 11.3 of Schedule 1.

Order Form means the document, executed by the parties and titled 'Trove Collaborative Services Agreement Order Form', which sets out specific details relating to the Services, such as the Commencement Date, Pricing Package, Confidential Information, etc.

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

Pricing Package means any of the pricing packages specified in Schedule 3.

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

Security Incident means security breach, violation, contact or approach from those seeking unauthorised access to material relating to the Services.

Services means the Trove Collaborative Services described in Schedule 1 provided by the NLA in accordance with the TCSA.

Standard Digitisation Service means the service specified in paragraph 11.2 of Schedule 1.

Supplementary Services means on request, fee-for-service options detailed in Schedule 1.

Terms and Conditions means clauses 1 to 22 of the TCSA.

Trove Collaborative Services Agreement or **TCSA** means the agreement between the NLA and the Trove Partner, as amended from time to time, and includes:

- (a) an Order Form executed by both parties;
- (b) these Terms and Conditions;
- (c) the schedules and any attachments to the Terms and Conditions, as given effect to by the Order Form; and
- (d) any detailed descriptions of the Services posted on the NLA's website from time to time.

Trove Partner means the party specified as such in the Order Form and, where the context permits, includes the party's officers, employees, volunteer workers, agents and contractors.

Trove Partner Contact Person means the person identified as such in the Order Form or their nominee.

Trove Collaborative Services means the services specified in Schedule 1 and as described in more detail on the NLA's website from time to time.

Trove Strategic Advisory Committee means the committee established by the NLA to provide a forum for consultation on the delivery and development of the Trove Collaborative Services.

1.2 Interpretation

In this TCSA, 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 the TCSA 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

The TCSA:

- (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 Trove Partner

(Existing Agreements), other than any agreements that are specifically listed in the Order Form to survive.

3. Structure of agreement and priority of documents

3.1 Agreement structure

The Trove Collaborative Services Agreement between the NLA and the Trove Partner consists of:

- (a) an Order Form;
- (b) these Terms and Conditions, as amended by the Order Form;
- (c) the schedules and any attachments to the Terms and Conditions, as given effect to by the Order Form;
- (d) any detailed descriptions of the Services posted on the NLA's website from time to time; and
- (e) written notification of amendments to services provided from time to time over the course of the agreement period.

3.2 Priority of documents

For the purposes of the TCSA, 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 Order Form;
- (b) the Terms and Conditions;
- (c) the schedules and any attachments to the Terms and Conditions; and
- (d) any detailed descriptions of the Services posted on the NLA's website from time to time.

4. Duration of TCSA

4.1 Agreement period

The TCSA commences on the Commencement Date and (unless otherwise lawfully terminated) continues for the duration of the Agreement Period.

Part 2 – Services and obligations

5. Services

5.1 Service obligations

- (a) The NLA must supply the Services in accordance with Schedule 1 (if applicable) and with due skill and care.
- (b) The NLA acknowledges that the contributions made by the Trove Partner under or in connection with the TCSA play an important part in achieving the objectives of the Services. The NLA will recognise and promote the Trove Partner's contributions as set out in Schedule 1 (if applicable).
- (c) The Trove Partner 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 Trove Partner 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. Trove Partner responsibilities

6.1 Responsibilities

- (a) In receiving the Services, the Trove Partner will:
 - (i) comply with the NLA's technical standards as specified in the Order Form or as advised by the NLA from time to time;
 - (ii) provide information as required to enable the NLA to meet its obligations under the TCSA, including by providing copyright and access permissions, contact details, and logos in accordance with the standards specified by the NLA in writing;
 - (iii) protect any passwords including by not sharing passwords used to access the Services with unauthorised individuals or entities;
 - (iv) comply with relevant policies relating to the use of Trove as notified by the NLA;
 - (v) ensure the value of the Services provided by the NLA is not diminished, including by the Trove Partner on-selling or allowing third parties to access the Services for commercial or other purposes without prior consultation with, and approval of, the NLA; and
 - (vi) participate in elections referred to in Schedule 2 in which it is eligible to vote.
- (b) The Trove Partner acknowledges that it is liable for:
 - (i) any breach by an official, employee, volunteer worker, agent or contractor of the Trove Partner of an obligation of the Trove Partner under this Agreement; and
 - (ii) any loss or damage to the NLA that is caused by any breach referred to in clause 6.1(b)(i).

7. Trove Strategic Advisory Committee

7.1 Operation of Trove Strategic Advisory Committee

The Trove Strategic Advisory Committee will operate in accordance with the procedures set out in Schedule 2.

8. Payment for Services

8.1 Fees for Trove Collaborative Services

- (a) Schedule 3 sets out the Pricing Packages that apply for the use of the Trove Collaborative Services. The Pricing Package that applies to the Trove Partner is specified in the Order Form.
- (b) The fees outlined in schedule 3 are subject to annual increases inline with CPI or 2%, whichever is lower, as well as changes that may occur inline with service offering changes.
- (b) Subject to this clause 8, the Trove Partner must pay to the NLA the fees which correspond to the Pricing Package specified in the Order Form annually in advance unless the parties agree otherwise.

(c) Where the Commencement Date is a date other than 1 July, the annual fee for the Trove Collaborative Services will be proportionally reduced such that it only covers the period from the Commencement Date until the next occurrence of 30 June.

8.2 Fees for Digitisation Services

The fees that the NLA will charge for any Digitisation Services will be set out in a quote prepared by the NLA pursuant to paragraph 11.5 of Schedule 1.

8.3 Fees for Trove Collaborative Services Supplementary Services

The fees that the NLA will charge for Trove Collaborative Services Supplementary Services will be set out in a quote prepared by the NLA upon receipt of a service request from the Trove Partner.

8.4 GST on Services

(a) Unless otherwise specified, any fee payable by the Trove Partner for any Services supplied under the TCSA is expressed exclusive of GST.

(b) If a fee in relation to the Services has been paid exclusive of GST, the Trove Partner will, on receipt of a tax invoice, pay the NLA an amount equal to the GST liability payable by the NLA on the supply of the relevant Services within 28 days of receiving the invoice.

8.5 NLA to provide invoice

The NLA must provide correctly rendered invoices to the Trove Partner.

8.6 Payment obligation

- (a) The Trove Partner must pay a correctly rendered invoice that is in accordance with the requirements of the TCSA within 28 days of receipt of the invoice or by a time period agreed to by the parties from time to time.
- (b) Subject to this clause 8.6, if the Trove Partner is unable to make payment within the specified time frame upon receipt of the invoice the Trove Partner will notify the NLA in writing. The NLA will make every reasonable effort to accommodate the Trove Partners request, considered on its merits on a case-by-case basis.
- (c) In lieu of written notification, the NLA will provide the Trove Partner with reminder notices and requests for payment. If the invoice remains unpaid after 120 days, the NLA may terminate the TCSA with written notice provided to the Trove Partner.

Part 3 - Information management

9. Intellectual Property Rights

9.1 Intellectual Property Rights

(a) All material that is contributed to the NLA, or created, by the Trove Partner under the TCSA will form part of the NLA's national collection.

(b) Title to, and ownership of:

- (i) all Intellectual Property Rights existing in the databases, digital tools and platforms used to deliver the Services remains vested in the NLA or where applicable in the licensor of the particular database or software; and

(ii) all Intellectual Property Rights in any material that is digitised pursuant to Schedule 1 is unaffected by this TCSA.

(c) The Trove Partner 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 Trove Partner under or in connection with the TCSA 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 Trove Partner warrants that it will use reasonable endeavours to ensure that its provision of data or 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 data or material provided by the Trove Partner that is found to infringe 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).

10. Confidentiality

10.1 Confidential Information not to be disclosed

A party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party, unless the Confidential Information:

- (a) is disclosed only to the extent strictly necessary in order for the party to manage and perform its obligations or to exercise or enforce its rights under the TCSA or to abide by legal obligations;
- (b) is disclosed by a party to its personnel solely in order to comply with obligations, or to exercise rights, under the TCSA;
- (c) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of TCSA-related activities;
- (d) is disclosed by the NLA to the responsible Australian Government Minister or a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the NLA with another Australian Government agency or the agency's advisers, where this serves the NLA's legitimate interests; or
- (f) is authorised or required by law to be disclosed.

10.2 Obligations on disclosure

- (a) Where a party discloses Confidential Information to another person:
 - (i) if the disclosure is made in accordance with clause 10.1(a), the party making the disclosure must, if required by the other party, obtain from the recipient of the information a properly executed confidentiality undertaking in a form approved by the NLA; and
 - (ii) if the disclosure is made in accordance with any of clauses 10.1(b) to 10.1(f), the party making the disclosure must inform the recipient of the confidential nature of the information.
- (b) A confidentiality undertaking will not be required under clause 10.2(a)(i) if the party making the disclosure confirms to the other party in writing and provides evidence that the recipient is an individual who is bound by obligations in their employment contract not to disclose the Confidential Information. The party making the disclosure must use all reasonable endeavours to enforce those obligations.

11. Security

11.1 NLA compliance with ISM

The NLA will comply with all applicable requirements of the Australian Government Information Security Manual (ISM).

11.2 Trove Partner cyber security

- (a) The Trove Partner must ensure that its systems are adequately protected to reduce the risk of a Cyber Attack.
- (b) The Trove Partner must use reasonable endeavours to prevent any Harmful Code from being introduced by it or any third party under its direction or control into the NLA's systems.
- (c) If a party becomes aware that Harmful Code has been, or is likely to have been, introduced into the other party's system, the party must:
 - (i) immediately notify the other party; and
 - (ii) cooperate with the other party as required to undertake remedial action to eliminate the Harmful Code and prevent re-occurrence and rectify any consequences (to the extent that they are capable of rectification).

12. Privacy

12.1 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, in particular the *Privacy Act 1988* (Cth).
- (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, in accordance with applicable privacy laws;
 - (ii) where it provides an individual's Personal Information to the other party or a third party in order to perform or receive the Services, the individual has provided consent to the disclosure prior to the Personal Information being disclosed, in accordance with applicable privacy laws, or the disclosure of the Personal Information is otherwise authorised by law; 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 for that 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

13. Indemnity

13.1 Trove Partner indemnity

(a) The Trove Partner 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 contract; or

(ii) any wilfully wrongful, unlawful, or negligent act or omission of the Trove Partner, or its officers, employees, volunteer workers, agents or subcontractors in using the Services.

(b) The NLA may enforce the indemnity in clause 13.1 in favour of the persons specified in clause 13.1 for the benefit of each of such persons in the name of the NLA or of such persons.

(c) The Trove Partner's indemnity in this clause 13 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 Trove Partner), as substantiated by the Trove Partner.

14. Termination

14.1 Termination for convenience

(a) Either party may, at any time, by giving not less than 60 days' written notice, terminate the TCSA.

(b) Where the TCSA is terminated by the Trove Partner under clause 14.1(a), the Trove Partner is not entitled to a refund of any prepaid fees. Any unpaid fees for services rendered prior to the date of termination are required to be paid by the Trove Partner.

(c) Where the TCSA is terminated by the NLA under clause 14.1(a), the Trove Partner will be entitled to a refund of any prepaid fees in respect of Services that have not been provided prior to the date of termination.

14.2 Termination for default

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

(a) the other party is in breach of the TCSA and has not cured the breach within 28 days of being required to do so in a written notice from the notifying party; or

(b) the other party is in material breach of the TCSA and the breach cannot be cured.

14.3 Effect of termination

Subject to clause 21, immediately upon the termination of the TCSA, all rights granted to the Trove Partner under the TCSA are terminated. As a result of termination the NLA may suppress the Trove Partner's access to metadata and suppress information specific to the Trove Partner.

15. Dispute resolution

15.1 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 15 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 comply with this clause 15.

15.2 Notification

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

15.3 Parties to resolve Dispute

(a) During the 14 days after a written notice is given under clause 15.2 (or longer period if the parties to the Dispute agree in writing), representative officers from each party to the Dispute must use reasonable efforts to resolve the Dispute before referring it to senior management of the parties.

(b) If the Dispute cannot be resolved under clause 15.3(a), the parties must escalate the Dispute to the senior management level. The parties must use reasonable efforts to resolve 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.

15.4 Confidentiality

Any information or documents disclosed by a party for the purpose of this clause 15:

(a) must be kept confidential; and

(b) may only be used to attempt to resolve the Dispute.

15.5 Costs

Each party to a Dispute must pay its own costs of complying with this clause 15.

15.6 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving written notice to the other party after it has complied with clauses 15.1 to 15.3. Clauses 15.4 and 15.5 survive termination of the dispute resolution process.

Part 5 – Law and Policy

16. Compliance with law and policy

16.1 General obligation

Each party must, in performing its obligations under the TCSA, comply with all applicable laws and any applicable policies set out in the Order Form.

Part 6 – Miscellaneous

17. Variation

17.1 Variation to be in writing

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

18. Negation of employment, partnership, agency

18.1 No employment, partnership or agency

Except as expressly permitted by this Agreement, the parties agree that the other party:

(a) is not an agent, representative, trustee, employee or partner of the other party by virtue of the TCSA 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 other party.

19. Notices

19.1 Notices to be in writing

A notice issued in accordance with the TCSA must be in writing, transmitted electronically to the address set out in the Order Form and signed by the sender or a person duly authorised by the sender (including electronically).

20. Severability

20.1 Severability of terms

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

21. Survival

21.1 TCSA terms that survive termination

The following clauses survive the termination of the TCSA: clause 9 (Intellectual Property Rights); clause 10 (Confidentiality); clause 11 (Security); clause 12 (Privacy); clause 13 (Indemnity) and this clause 21 (Survival).

22. Governing Law

22.1 Governing law and jurisdiction

The TCSA 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.