

**Version 3.1 - Updated: 14 July 2023**

## **AGREEMENT FOR SUPPLY OF EPLATFORM SERVICES**

### **BY WHEELERS EPLATFORM LIMITED**

This Agreement sets out the terms and conditions which apply to the supply by Wheelers ePlatform Limited ("ePlatform") of certain services (defined in this Agreement as the "Services").

### **CONTENTS**

This agreement consists of the following parts:

1. Terms and Conditions
2. Schedule 1 – DRM Services
3. Schedule 2 – Related Services
4. Schedule 3 - End User Terms for Adobe Content Server
5. Schedule 4 – Supplemental Terms for Customers in the United Kingdom Economic Area
6. Schedule 5 – Data Processing Addendum

## **TERMS AND CONDITIONS**

### **BACKGROUND:**

- A. ePlatform distributes digital books, including ebooks and audiobooks, and provides literacy tools associated with the digital books
- B. ePlatform has developed a system enabling libraries to lend ebooks to the Customer's library members and patrons, known as the ePlatform system
- C. The Customer wishes to use the ePlatform system
- D. This Agreement sets out the terms and conditions which apply to the Customer's use of the ePlatform system

## **AGREEMENT:**

### **1. Definitions**

1.1 In this Agreement unless the context otherwise requires:

**Business Day** means a day on which trading banks in Auckland are normally open for business except for any day in the period commencing on 24 December in any year and ending on the 5th day of January in the following year, both days inclusive.

**Commencement Date** means the date identified as the commencement date in the Confirmation Email.

**Confirmation Email** means the email sent to the Customer by ePlatform confirming online registration by the Customer for the Services.

**Consortium** means a group of Consortium members who have the ability to Share ebooks and audiobooks using the ePlatform.

**Consortium member** means a Customer who is part of a Consortium.

**Currency** means the currency identified in the Confirmation Email as the applicable currency for any payments to be made by the Customer to ePlatform.

**Deal with** means to transfer, download, save, store, distribute, transmit, print, copy, paste, adapt, amend, or use or deal with in any format or means now known or to be discovered.

**DRM** means digital rights management.

**DRM Content** means ebooks and audiobooks which are available to End Users of the Customer via the Portal using the ePlatform system to manage digital rights.

**DRM Services** means the services to be provided to the Customer under this Agreement which are more particularly described in Schedule 1 and in the Confirmation Email.

**ebooks** means a book or other work (including, but not limited to, audio files and video files) in digital form.

**ePlatform** means Wheelers ePlatform Limited together with its successor and assigns as well as the ePlatform system and services

**ePlatform ebook** means an ebook sourced by the Customer from ePlatform.

**ePlatform audiobook** means an audiobook sourced by the Customer from ePlatform.

**ePlatform system** means ePlatform' system for managing the distribution of ebooks, audiobooks including DRM technology and other systems and processes.

**Fees** means any amounts payable by the Customer to ePlatform for provision of the Services as set out in the Confirmation Email and/or as agreed between the Customer and ePlatform from time to time and/or as reviewed from time to time in accordance with clause 4.5. The current schedule of Fees is displayed on the ePlatform website.

**Customer Website** means the website operated by the Customer, including the Customer's online catalogue, which links to the Portal.

**Loan** means providing an End User with access to an ebook or audiobook which forms part of the DRM Content for a limited period of time (such period not exceeding 60 days).

**End User** means any person who the Customer advises ePlatform (in the manner set out in clause 6.1) is a current patron, student or associate of the Customer.

**Misappropriation** means theft, unauthorised access, copying or retransmission, infringement, unauthorised manipulation or any other misappropriation.

**Non-DRM Content** means ebooks and audiobooks which are available to End Users of the Customer via the Portal but which do not, in the reasonable opinion of ePlatform, require use of the ePlatform to manage digital rights.

**Portal** means the website hosted by ePlatform and used by End Users of the Customer to access the Customer's DRM Content and Non-DRM Content.

**Private ebooks** means any DRM Content which is not a Shared ebook.

**Private audiobooks** means any DRM Content which is not a Shared audiobook.

**Related Services** means the services to be provided to the Customer under this Agreement which are more particularly described in Schedule 2, together with any other services which the parties may agree in writing ePlatform will provide to the Customer.

**Services** means the DRM Services and the Related Services.

**Share** means allowing an End User of a Consortium member in the same Consortium to access to an ebook or audiobook on Loan where authorised.

**Shared ebook** means any ebooks which a Consortium member has made available to Share.

**Shared audiobook** means any audiobook which a Consortium member has made available to Share.

**Territory** means the country identified as the territory in the Confirmation Email.

**Third Party ebooks** means an ebooks which has been sourced by the Customer from a person other than ePlatform.

1.2 In this Agreement unless the context requires otherwise:

1.2.a. the singular includes the plural and vice versa;

1.2.b. the headings are used for convenience only and do not affect the interpretation of this Agreement;

1.2.c. a reference to a document includes the document as modified from time to time and any document replacing it;

1.2.d. if something is to be done on a day which is not a Business Day then that thing must be done on the next or following Business Day;

1.2.e. the word "person" includes a natural person and any body or entity whether incorporated or not; and

1.2.f. the words "in writing" include any communication sent by letter, facsimile transmission or email.

## **2. Content**

2.1 DRM Content will comprise:

2.1 a. ePlatform' ebooks and audiobooks; and

2.1 b. Third Party ebooks and audiobooks provided by the Customer to ePlatform in a suitable digital format for use on the ePlatform, subject to the Customer procuring the necessary rights for ePlatform to make those ebooks and audiobooks available to End Users of the Customer on Loan.

2.2 The Customer may provide ePlatform with ebooks and audiobooks to comprise DRM Content in a suitable digital format for use on the Portal. ebooks and audiobooks acquired by the Customer from ePlatform will be automatically added to the DRM Content.

2.3 ePlatform reserves the right to remove any ebooks or audiobooks from the DRM Content or the Non-DRM Content where ePlatform considers (acting reasonably) that access to such ebooks and audiobooks by End Users in the manner contemplated by this Agreement has or may result in the infringement of the intellectual property rights of any person. ePlatform will notify the Customer without delay of any action taken or contemplated by ePlatform under this clause.

### **3. Services**

3.1 Subject to payment of the applicable Fees (if any), ePlatform will supply the Customer with the DRM Services and the Related Services during the term of this Agreement.

3.2 Subject to the terms and conditions of this Agreement, Services will be supplied by ePlatform in accordance with:

3.2.a. the relevant specifications set out in Schedule 1 and Schedule 2 to this Agreement; and

3.2.b. any other specifications as may be agreed in writing between ePlatform and the Customer.

3.3 ePlatform will ensure that the ePlatform system uses advanced methods which meet all relevant generally accepted industry practices to:

3.3.a. keep ebooks and audiobooks secure and under the control of ePlatform (subject to the rights of the Customer under this Agreement and access by End Users in the manner contemplated by this Agreement); and

3.3.b. prevent End Users from copying or printing ebooks or audiobooks which comprise the DRM Content (except to any extent which may be expressly permitted by the holders of the distribution rights for such ebooks or audiobooks); and

3.3.c. protect ebooks and audiobooks from Misappropriation.

3.4 In the course of providing the DRM Services, ePlatform agrees:

3.4.a. to Deal with DRM Content for the purposes contemplated by this Agreement and for no other purpose;

3.4.b. to manage Loans of DRM Content on the ePlatform;

3.4.c. to provide the Customer with details of Loans to End Users in a suitable format to enable the Customer to update its records;

3.4.d. to provide End Users with single electronic copies of ebooks and audiobooks which make up DRM Content;

3.4.e. to monitor the ePlatform for evidence of unauthorised use of ebooks /audiobooks and promptly upon becoming aware of any unauthorised use of ebooks or audiobooks ePlatform will inform the Customer and take all reasonable steps to cause such activity to cease and to prevent any recurrence;

3.4.f. to respond promptly to the Customer's requests for information in connection with any alleged copyright infringement or other unauthorised use of ebooks or audiobooks; and

3.4.g. to comply with all laws and regulations applicable to the performance of this Agreement by ePlatform.

3.5 The Customer acknowledges that provision of the Services under this Agreement may not be completely uninterrupted and/or error free and that the sole obligation of ePlatform in relation to any errors which may be identified or interruptions to the delivery of the Services which may occur shall be to use all commercially reasonable efforts to correct such errors or to restore operation of the affected Services (as the case may be).

3.6 ePlatform reserves the right to make modifications to the operation, performance and/or functionality of the Portal and the ePlatform from time to time (at ePlatform's sole discretion). Where ePlatform considers that such modifications require changes to the Customer Website, ePlatform will provide the Customer with as much advance notice as is reasonable in the circumstances.

3.7 The Customer acknowledges and agrees that ePlatform may:

3.7.a. include features and functionality on the Portal which provide End Users with the ability to send requests to the Customer to purchase ebooks, audiobooks and hard copy books from ePlatform; and

3.7.b. display its branding, trademarks, logos and/or other marketing or promotional materials of ePlatform and/or third parties on the Portal.

3.8 Subject to the Customer receiving written confirmation from ePlatform that the Customer is permitted to access services necessary for the Customer to enjoy the benefit of the "Consortium Customer" module, ePlatform will supply the Customer with the Services necessary to Share ebooks and audiobooks and the provisions of clauses 3.9 to 3.11 (inclusive) shall apply.

3.9 The Customer acknowledges that the ability of ePlatform to allow an ebook or audiobook to be Shared is governed by the rights granted to ePlatform by third parties and as a result certain ebooks and audiobooks in the Customer's collection will not be eligible to be Shared ebooks/audiobooks. ePlatform gives no representation or warranty that it possesses or will obtain the grant of the rights necessary to allow all ebooks and audiobooks

in the Customer's collection (whether currently or in the future) to be Shared ebooks or audiobooks.

3.10 The Customer acknowledges and agrees that ePlatform may from time to time:

3.10.a. make rules relating to the establishment of Consortium and the persons who may join each Consortium as Consortium members, and to vary such rules;

3.10.b. disestablish any Consortium and/or remove any person as an Consortium member of any Consortium where this is necessary to comply with the rules referred to in clause 2.3(a);

3.10.c. publish specifications for the Services described in clause 2.1, and vary such specifications;

3.10.d. designate certain ebooks and audiobooks as being unavailable to Share or as being available to Share with a limited number of Consortium members in a Consortium where this is necessary or desirable in order to eliminate or reduce the risk of infringement of the intellectual property rights of any person; and

3.10.e. alter the status of any Shared ebook or audiobook to a Private ebooks or audiobook where this is necessary or desirable in order to eliminate or reduce the risk of infringement of the intellectual property rights of any person.

3.11 ePlatform will notify the Customer without delay of any action taken by ePlatform under clause 3.10.

3.12 Where the Customer and/or its End Users are located in the United Kingdom Economic Area the provisions set out in Schedule 4 to this Agreement apply.

#### **4. Fees and Payment**

4.1 The Customer shall pay the Fees to ePlatform in the manner set out in this Agreement. Fees are stated exclusive of Goods and Services Tax which shall be payable by the Customer in addition to the Fees.

4.2 All payments made by the Customer to ePlatform will be:

4.2.a. remitted as directed by ePlatform; and

4.2.b made in the Currency.

4.3 ePlatform will keep true and particular records of Loans made to End Users.

4.4 ePlatform will issue invoices for Fees on a monthly basis, and subject to clause 4.7 the Customer will pay each such invoice on or before the 20<sup>th</sup> day of the month following the month in which the relevant Fees fell due for payment.

4.5 ePlatform will notify the Customer of any changes to the Fees and/or to impose new or additional Fees, provided that any altered, new or additional Fees shall not apply until at least 7 Business Days after notice is given.

4.6 In the event that the Customer fails to pay any amount due under this Agreement on or before the due date then, without prejudice to ePlatform' other rights and remedies, ePlatform may require the Customer to pay interest on the amount unpaid at the rate of 15 % per annum calculated on a daily basis for the period commencing on the date that such payment fell due and ending on the date that payment in full is made.

4.7 ePlatform may set off any Fees and other amounts due to ePlatform against any monies owing by ePlatform to the Customer.

## **5. Customer's Obligations**

5.1 The Customer shall provide and operate, at its own expense, the Customer Website, network and Internet system necessary for connection to, and efficient use of, the Portal and the Services. Except to the extent expressly provided in this Agreement or as otherwise may be agreed by ePlatform in writing, ePlatform shall have no obligation to reimburse the Customer for any cost or expense incurred by the Customer in complying with the Customer's obligations under this clause, including (without limitation) where any such cost or expense results from changes or upgrades to the ePlatform, the Portal or any other change to the manner in which ePlatform provides the Services.

5.2 Without limiting clause 5.1, the Customer will acquire, at its own expense, any software licenses necessary to enable connection to, and efficient use of, the Portal and the Services including (without limitation) a SIP2 license if required (SIP2 is one of a number of options available for Patron Authentication).

5.3 The Customer will assign personnel in appropriate numbers and with appropriate skills to enable efficient use of the Services by End Users and to provide End Users with all technological and other support required in connection with End Users' use of the Services.

5.4 The Customer agrees to promptly inform ePlatform of any errors or omissions in the Services of which the Customer becomes aware.

5.5 The Customer grants ePlatform the right to incorporate the Customer's name, logos, trademarks, colour schemes and other distinguishing marks and features into the Portal.

5.6 The Customer will not make any representations, or provide any warranty or guarantee, to any person in relation to the Services unless such representation, warranty or guarantee has been approved by ePlatform in writing.

5.7 The Customer undertakes and warrants:

5.7.a. the supply of any Third Party ebooks or audiobooks to ePlatform under this Agreement and ebooks and audiobooks comprising Non-DRM Content and the use of such ebooks or audiobooks by ePlatform as contemplated by this Agreement will not violate any obligation that the Customer owes to any third party or infringe upon the Intellectual Property rights of any person;

5.7.b. that the ebooks or audiobooks comprising Non-DRM Content do not contain any libellous, defamatory or unlawful material; and

5.7.c. to comply with all laws and regulations applicable to the performance of this Agreement by the Customer.

5.8 When registering for ePlatform services, the Customer agrees to provide current, complete, and accurate information as prompted by the applicable registration form

mandatory fields. The mandatory fields in the registration form must be filled in with accurate information. Any inaccurate or false information, or failure to update and maintain current, complete and accurate information, may result in your registration or account being suspended or terminated by us without notice.

## **6. End Users**

6.1 The Customer will provide ePlatform with such information relating to End Users as may reasonably be required by ePlatform to verify that persons seeking access to DRM Content and Non-DRM Content are current End Users of the Customer. Information relating to End Users will be provided in the format and updated with the frequency reasonably required by ePlatform.

6.2 The Customer acknowledges that ePlatform' rights to distribute ebooks and audiobooks comprising the DRM Content may be subject to geographical restrictions and that ePlatform will be entitled to refuse to Loan such ebooks and audiobooks to End Users who do not reside within the Territory.

6.3 The Customer acknowledges and agrees that ePlatform will require End Users to confirm acceptance of certain terms and conditions when taking ebooks and audiobooks from the Customer's DRM Content on Loan, including (but not limited to):

6.3.a. not to use ebooks or audiobooks for any unlawful or infringing purpose;

6.3.b. not to reproduce, license, sell or otherwise distribute the ebooks or audiobooks; and

6.3.c. to use ebooks exclusively as a reference or informational tool for that End User's use only.

6.4 When registering for ePlatform services, you agree to provide current, complete, and accurate information as prompted by the applicable registration form mandatory fields. The mandatory fields in the registration form must be filled in with accurate information. Any inaccurate or false information, or failure to update and maintain current, complete and

accurate information, may result in your registration or account being suspended or terminated by us without notice.

## **7. Protection Measures**

7.1 The Customer will use all reasonable endeavours to assist ePlatform to protect the copyright and other intellectual property rights and interests in the software and other products forming part of the ePlatform, DRM Content and the Portal including (but not limited to):

7.1.a. adoption of suitable policies and procedures by the Customer;

7.1.b. establishment of dummy End User accounts for testing purposes;

7.1.c. allowing access to such accounts by ePlatform for the purposes of testing system performance and security; and

7.1.d. correction and/or adjustment of systems to deal with issues detected during testing.

7.2 The Customer acknowledges and agrees that:

7.2.a. the ePlatform will use software and other products which are licensed to ePlatform by third parties and that ePlatform is required to abide by the terms of the agreements under which such software and products are licensed; and

7.2.b. the terms set out in Schedule 3 to this Agreement (which Datalogics, Inc requires in connection with the use by ePlatform of Adobe Content Server software) are binding on the Customer;

7.2.c. ePlatform may from time to time notify the Customer in writing of additional terms and conditions which must be accepted by the Customer in order for ePlatform to comply with its obligations under licence agreements between ePlatform and third parties providing software and other products used in the ePlatform;

7.2.d. terms and conditions notified by ePlatform to the Customer under clause 7.2(c) shall form part of this Agreement and bind the Customer unless the Customer notifies ePlatform within 10 Business Days of receipt of the relevant notice under clause 7.1(c) that the Customer does not accept such additional terms and conditions; and

7.2.e. in the event that the Customer notifies ePlatform under clause 7.2(d) that the Customer does not accept the relevant terms and conditions, ePlatform may terminate this Agreement by giving written notice to the Customer.

## **8. Term and Termination**

8.1 Subject to any rights of earlier termination, this term of this Agreement commences on the Commencement Date and continues until the first anniversary of the Commencement Date ("Initial Term"). The term of this Agreement will automatically renew at the end of the Initial Term or any subsequent renewal term (as the case may be) for successive further terms of one year on the same terms and conditions.

8.2 Either party may terminate this Agreement by giving not less than three months' notice in writing to the other party.

8.3 Without prejudice to any other right or remedy it may have, whether under this Agreement, under statute or otherwise, either party may terminate this Agreement by written notice to the other party if:

8.3.a. a party breaches any of its material obligations under this Agreement; and

8.3.a.i. the breach is not capable of being remedied; or

8.3.a.ii. the breach is capable of being remedied and the party in breach fails to remedy the breach within 10 Business Days after notice in writing has been given to the party in breach requiring such breach to be remedied; or

8.3.b. an Insolvency Event occurs in respect of the other party.

8.4 For the purposes of clause 8.3, "Insolvency Event" means in respect of a party (other than for the purpose of solvent reconstruction or amalgamation):

8.4.a. a receiver, receiver and manager, liquidator, provisional liquidator, administrator or controller is appointed in respect of that party or any of its property;

8.4.b. the party ceases to carry on business or makes an assignment for the benefit of, or enters into or makes any arrangement or compromise with, that party's creditors or threatens to do so; or

8.4.c. the party is, becomes, or is deemed to be insolvent or bankrupt.

8.5 The Customer and ePlatform acknowledge that a Customer may request that ePlatform facilitate a transfer of all ebooks which comprise the DRM Content and the Non-DRM Content to another person who will manage Loans to End Users of the Customer following termination of this Agreement. ePlatform will seek to comply with such request, subject to:

8.5.a. all necessary consents being obtained;

8.5.b. ePlatform being satisfied (acting reasonably) that the transfer of ebooks will not result in the infringement of the intellectual property rights of any person; and

8.5.c. the Customer meeting ePlatform' reasonable costs and expenses (including management time) in seeking to comply with the Customer's request (whether or not the requested transfer of ebooks is able to proceed).

8.6 Termination of this Agreement shall:

8.6.a. not affect those provisions of this Agreement which are intended to continue after termination; and

8.6.b. be without prejudice to any claim by either party arising out of any breach or non-performance by that party of any obligations assumed by or imposed on that party under this Agreement at any time prior to termination.

## **9. Confidentiality**

9.1 Each party shall at all times keep confidential, treat as privileged, and not directly or indirectly make or allow any copying, disclosure or use to be made, of any provision of this Agreement or of any information including, without limitation, any specifications, reports, ideas, concepts, technology, software, procedures, techniques and know-how relating to the provision of the Services under, or any other subject matter of, this Agreement, or any information directly or indirectly obtained from another party under or in connection with this Agreement or in relation to the business activities of the other party, except to the extent:

a. required by law; or;

b. necessary to satisfy the requirements of any recognised stock exchange;

c. necessary to obtain the benefit of, or to carry out obligations under, this Agreement

d. that parties otherwise agree in writing; or

e. that the information is or becomes available in the public domain without breach by a party of its confidentiality obligations under this clause or at law.

9.2 In the event that a party becomes aware that it is legally compelled to disclose any information to which clause 9.1 relates, that party shall immediately give written notice of the requirement for such disclosure to the other party.

## **10. Liability**

10.1 To the extent that the liability of ePlatform under this Agreement is not otherwise limited or excluded and to the extent permitted by law, the total liability of ePlatform whether in tort (including negligence), contract or otherwise, for any loss, damage or injury arising directly or indirectly from any defect in the Services or any other breach of ePlatform' obligations under this Agreement is limited to the lesser of:

10.1.a. the Fee paid by the Customer for the relevant Service;

10.1.b. the cost of re-performing the relevant Service; and

10.1.c. the actual loss or damage suffered by the Customer (excluding any loss or damage of the type referred to in clause 10.2).

10.2 Notwithstanding any other provision of this Agreement, under no circumstances will ePlatform be liable for any loss of income or profits or any consequential, indirect or special damage or injury of any kind suffered by the Customer, an End User or any other person.

10.3 Except for any rights the Customer may have under any express term of this Agreement, all guarantees, warranties, descriptions, representations or conditions whether expressed or implied by law, trade, custom or otherwise are expressly excluded to the fullest extent permitted by law.

10.4 The Customer agrees that the provisions of the Consumer Guarantees Act 1993 do not apply to any goods or services which are acquired by the Customer under this Agreement for business purposes.

## **11. Intellectual Property**

11.1 Existing intellectual property which is not developed under this Agreement but which is used for the purposes of this Agreement shall remain the property of its current owner. In particular, the Customer acknowledges and agrees that ownership of copyright and other intellectual and proprietary rights in the ePlatform and the Portal shall remain with ePlatform and/or its suppliers.

11.2 Unless otherwise agreed in writing, ownership of intellectual property, or modifications and additions to existing intellectual property, which is developed during performance of any

Services under this Agreement shall vest in ePlatform without the need for any party to execute any further document.

## **12. Dispute Resolution**

12.1 The parties shall use their best endeavours to resolve between themselves any dispute that arises out of or in connection with this Agreement, including any dispute as to its existence or validity ("Dispute"), within 10 Business Days of a party serving written notice on the other parties stating the subject matter and details of the Dispute.

12.2 If any Dispute between the parties is not settled by the parties themselves within 10 Business Days, the dispute shall be submitted to the arbitration of a single arbitrator agreed on between the parties, or in default of Agreement to be nominated by the President of the New Zealand Law Society. The arbitration will be conducted in accordance with the Arbitration Act 1996 and the provisions of the Second Schedule of the Act will apply. The parties reserve the right to appeal to the High Court on any question of law arising out of an award.

12.3 Nothing in this clause 12 will prevent any party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

12.4 This clause shall survive the expiration or termination of this Agreement.

## **13. Notices**

13.1 Every notice to be given under, or in connection with, this Agreement shall be given in writing by:

13.1.a. personal delivery;

13.1.b. mailing by pre-paid registered letter within New Zealand, and shall be deemed to be given two Business Days after (but exclusive of) the date of mailing; or

13.1.c. facsimile or email transmission, and shall be deemed to be given on the date shown on the transmission report by the machine from which the facsimile or email was sent which indicates that the facsimile or email was sent in its entirety and in legible form to the facsimile number or email address of the party to whom notice is given.

to the address for the Customer set out in the Confirmation Email and to the address for ePlatform specified below. If a written notice of change of address is given then notices shall be sent to such new address:

Wheelers ePlatform Limited  
9a Piermark Drive, Rosedale  
Auckland, New Zealand

Phone +64 (0) 9 870 3331 email ebooks@eplatform.co

Notwithstanding any other provision contained in this clause any notice given after 5pm, or on a day which is not a Business Day, shall be deemed to be given at 9am on the next Business Day.

#### **14. Changes**

14.1 ePlatform reserves the right at any time to modify the terms of this Agreement, and/or to impose new or additional terms or conditions in connection with the provision of the Services. Such variations to the terms and conditions of this Agreement shall be effective immediately and shall be deemed to be incorporated into this Agreement. Continued use of the Services by the Customer shall be deemed acceptance of such variations to the terms and conditions.

#### **15. General**

15.1 The Customer shall not, without the prior written consent of ePlatform, assign or otherwise purport to deal with that party's rights, obligations or interests under this Agreement.

15.2 No party is liable for any breach or failure to perform any of the terms of this Agreement where such breach or failure is caused by war, civil commotions, strikes, lockouts, act of God, governmental regulations or directions, or any other cause or causes beyond the parties' reasonable control, whether similar to any of the foregoing or not.

15.3 Any waiver by either party of any rights arising from any breach of any term of this Agreement shall not be construed as a continuing waiver of other breaches of the same or other terms of this Agreement by any other party.

15.4 This Agreement constitutes the full Agreement between the parties and supersedes all prior negotiations, proposals and Agreements whether oral or written with respect to the subject matter of this Agreement.

15.5 This Agreement shall be governed by, and construed in accordance with, the laws of New Zealand.

## **SCHEDULE 1**

### **DRM Services**

#### Establishment of the Portal

Establishment of the ePlatform ebook and audiobooks lending platform with unique URL for the Customer, capable of providing the services and infrastructure for the Customer to manage and loan ebooks and audiobooks to End Users within a secure DRM environment.

Specifically includes:

1. A web portal (ePlatform ePlatform) with the Customer's own unique URL and logo to enable patrons to borrow and/ or reserve ebook and audiobook titles. It includes user-friendly features for searching, browsing and filtering to facilitate selection.
2. A web-based administrative access that enables Customer staff to control specific ePlatform configurations such as loan parameters (within defined limits), reserve allowances, and user permissions, and to view reports on borrowing. .
3. The optional facility to charge variable fees for lending and/or reserves on key titles e.g. best sellers. This is managed via the admin area online.
4. Access to the ePlatform website or ePlatform Shop area for purchasing of new ebooks and audiobook titles licensed for Customer lending.

Following an ebook or audiobook purchase by the Customer, notification of the unique URL for each ebook or audiobooks title is provided via a Brief Marc Record file (Encoded Level 3).

#### Support for Setting Up Patron Authentication

Prior to facilitating the Loan, the ePlatform will authenticate and validate that the End User is authorised to take Loans of ebooks or audiobooks from the ePlatform. There are several options available to validate their credentials (Patron Authentication) and these are listed on the Patron Authentication page of the ePlatform website.

Once validated, they can take Loans of ebooks and audiobooks and download them from the ePlatform. Anyone accessing the ePlatform will need to have a suitable internet connection and a suitable device for reading the ebooks or listening to audiobooks. For further information on this please see FAQs area of the ePlatform website.

ePlatform will provide assistance to the Customer in relation to setting up the link between the Customer's management systems and the ePlatform so that Patron Authentication is operational based on one of the several options available (as referred to above).

#### Hosting and Managing DRM Content and DRM Content Loans

Hosting, storage and lending, with DRM protection of the digital media. The ePlatform system ensures a single ebooks or audiobook is on Loan to a single End User at a time and that titles are returned on time (expired). Usage is restricted in that Loaned titles cannot be copied or printed or read beyond the Loan period defined by the Customer.

A Fee may be charged per ebooks (invoiced at the time of purchase from ePlatform) relating to hosting, storage and lending of that ebooks with DRM protection. Current pricing may be viewed on the pricing page of the ePlatform website.

#### Uploading Customer / 3<sup>rd</sup> party Content

Wheeler's ePlatform allows for hosting and DRM protection of digital content from other sources as long as it meets the following criteria:

1. Use of the content on the ePlatform will not violate any obligation that the school / Customer owes to any third party or infringe upon the Intellectual Property rights of any person. For example, if the content is subject to copyright then the school / library will need to obtain express permission from the copyright owner for the content to be uploaded to the ePlatform and used within the school / Customer environment.
2. Data supplied by the Customer must be in a suitable format and ready for upload. It cannot for instance have DRM already applied. The ePlatform applies DRM protection each time the title is loaned out.

A Fee may be charged per ebooks (invoiced at the time the ebooks is loaded) relating to hosting, storage and lending of that ebooks with DRM protection. Current pricing may be viewed on the pricing page of the ePlatform website.

## **SCHEDULE 2**

### **Related Services**

#### Uploading Non-DRM Content

The ePlatform is available for hosting Customer content not requiring DRM protection. Data supplied by the Customer must be in a suitable format and ready for upload.

It is the responsibility of the school / Customer to ensure that use of the content on the ePlatform will not violate any obligation that the school / Customer owes to any third party or infringe upon the Intellectual Property rights of any person. For example, if the content is subject to copyright then the school / Customer will need to obtain express permission from the copyright owner for the content to be uploaded to the ePlatform and used within the school / Customer environment.

#### Hosting Non-DRM Content

The ePlatform is available for hosting Customer content not requiring DRM protection.

Currently there is no additional charge for hosting files totaling less than 250MB in size. Hosting for files which are larger than this size will be subject to a Fee to cover ePlatform' costs (which Fee would be discussed and agreed at the relevant time).

#### Customisation of the Portal

Further customisation of the Customer ePlatform beyond the introduction of the Customer logo (or banner for Public Libraries) is optional at an additional cost.

Fees will be quoted by ePlatform based on the degree of customisation requested.

## **SCHEDULE 3**

### **End User Terms for Adobe Content Server (“Software”)**

1. No Modification or Reverse Engineering. End User specifically acknowledges and agrees that other than as expressly set forth in the Agreement, End User shall not modify, port, adapt or translate the software or its documentation. End User will not reverse-engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software not supplied to End User in source code form. Notwithstanding the foregoing, decompiling the Software is permitted to the extent that the laws of a jurisdiction give End User the right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, that End User must first request such information from Datalogics, Inc. (“Licensor”) or its supplier, and Licensor or its supplier may, in its discretion, either provide such information to End User or impose reasonable conditions, including a reasonable fee, on such use of the Software to ensure that Licensor (and its suppliers) proprietary rights in the Software are protected.

2. Proprietary Notices. End User agrees that as a condition of its rights hereunder, each copy of the Software and its documentation it is permitted to make under this Agreement shall contain the same proprietary notice of Licensor and its suppliers that appear in such Software or documentation provided by licensor, and as otherwise may be reasonably required by Licensor.

3. Ownership. Licensor and its suppliers are the sole and exclusive owners of all rights, title and interest, including all trademarks, copyrights, patents, trade names, trade secrets, and other intellectual property rights in and to the Software. Except for the rights expressly granted in this agreement, End User is not granted any rights to patents, copyrights, trade names, trademarks (whether or not registered), or any other rights, franchises or licenses with respect to the Software or its documentation, and End User agrees that it will not exceed the scope of the licenses granted herein. There are no implied licenses granted under this agreement, and all rights not expressly granted to End User in this agreement are reserved.

4. Log-In Information. To gain access to and use the End User may be required to create an ID and password or other log-in ID and password issued by Adobe Systems Incorporated (“Log-In Information”). End Users are responsible for all activity occurring under their Log in Information, and must keep their Log In Information confidential and not share their Log In Information with third parties. Adobe has no obligation or responsibility with regard to your use, distribution, disclosure, or management of Log-In Information. Notwithstanding the foregoing, Adobe may require you to change your Log-In Information if such Log-In Information is inconsistent with the terms of this Agreement.

5. Use Restrictions. In Connection with End Users’ access or use of the Adobe License Signing Service (“Service”), Customer and its End Users will not:

5.a introduce a virus, worm, Trojan horse or other harmful software code or similar files that may damage the operation of a third party’s computer or property or information;

5.b use the Service in any manner that could damage, disable, overburden, or impair any server, or the network(s) connected to any server or interfere with any party's use and enjoyment of the Service;

5.c attempt to gain unauthorized access to service, materials, other accounts, computer systems or networks connected to any server or to the Service, through hacking, password mining, or any other means;

5.d obtain or attempt to obtain any materials or Information through any means not intentionally made available through the Service;

5.e host, on a subscription basis or otherwise, the Service, including and related application, to permit a third party to use the Service to create, transmit, or protect and content;

5.f engage in any systematic extraction of data fields, including without limitation E-mail addresses;

5.g disclose, harvest or otherwise collect Information, including E-mail addresses, or other private Information about any third party without that party's express consent;

5.h transmit junk mail, spam, surveys, contests, pyramid schemes, chain letters, or other unsolicited E-mail or duplicative messages;

5.i sell, lease, or rent access to or use of the Service, or otherwise transfer any rights to use the Service under this agreement (including without limitation, on a timeshare or service bureau basis); or

5.j defraud, defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others.

6. Termination of Service. Upon the material breach by End User of a provision of this agreement respecting the Service that is not cured within 30 days after written notice to End User, Adobe or Licensor may discontinue access to the Service.

## SCHEDULE 4

### Supplemental Terms for Libraries in the United Kingdom Economic Area

#### 1. Definitions and interpretation

1.1 In this Schedule:

**Data** means all Personal Data collected, generated or otherwise processed by ePlatform as a result of, or in connection with, the provision of the Services.

**Data Subject** means an individual who is the subject of Personal Data.

**UKEA** means the United Kingdom Economic Area.

**GDPR** means the General Data Protection Regulation (EU 2016/679).

**Personal Data** has the meaning given to it under GDPR.

**Relevant Law** means the laws of the United Kingdom Union or the laws of a member state of the United Kingdom Union.

**Sub-Processor** has the meaning set out in paragraph 3.1 of this Schedule 4.

**Supervisory Authority** means any data protection authority with jurisdiction over the processing of the Data.

1.2 Terms used in this agreement have the same meaning as ascribed to them in the ePlatform Agreement unless a contrary intention is expressly stated.

#### 2. Data Processing

2.1 ePlatform may only process Data for the duration of the Agreement and within the scope of:

(2.1.a) the nature and purpose of processing;

(2.1.b) the types of Personal Data; and

(2.1.c) the categories of Data Subject,

set out in the Annexure to this Schedule 4.

2.2 ePlatform shall process the Personal Data only in accordance with the documented instructions of the Customer (including in this Agreement), unless Supplier is required to process the Data for other reasons under Relevant Law to which ePlatform is subject. If ePlatform is required to process the Data for these other reasons, ePlatform shall inform the Customer before carrying out the processing, unless prohibited by Relevant Law.

2.3 ePlatform shall immediately inform the Customer if, in its opinion, an instruction from the Customer infringes GDPR or other data protection provisions in Relevant Law.

2.4 ePlatform shall ensure that all persons authorised by ePlatform to process Data are bound by obligations of confidentiality.

2.5 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, ePlatform shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including as appropriate:

(2.5.a) the pseudonymisation and encryption of Personal Data;

(2.5.b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

(2.5.c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and

(2.5.d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

2.6 In assessing the appropriate level of security, ePlatform shall take into account the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed.

2.7 ePlatform shall take steps to ensure that any natural person acting under the authority of ePlatform who has access to Personal Data does not process such data except within the authority from the Customer referred to in paragraph 2.2 of this Schedule 4, unless he or she is required to do so by Relevant Law.

2.8 The Provider is fully GDPR (General Data Protection Regulation) compliant. Terms defined in the Data Protection Act 2018

### 3. Sub-Processors

3.1 ePlatform shall not engage any third party to carry out processing in connection with the Services (Sub-Processor) without prior specific or general authorisation of the Customer. In the case of general written authorisation, ePlatform shall inform the Customer of any intended changes concerning the addition or replacement of other processors, thereby giving the Customer the opportunity to object to such changes.

3.2 Where ePlatform engages a Sub-Processor for carrying out specific processing activities on behalf of the Customer, the same data protection obligations as set out in this agreement shall be imposed on that Sub-Processor by way of a contract or other legal act under Relevant Law. Where the Sub-Processor fails to fulfil its data protection obligations,

ePlatform shall remain fully liable to the Customer for the performance of the Sub-Processor's obligations.

#### **4. Co-operation with the Customer**

4.1 Taking into account the nature of the processing, ePlatform shall assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of GDPR.

4.2 ePlatform shall assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of GDPR taking into account the nature of processing and the information available to ePlatform.

4.3 At the choice of the Customer, ePlatform shall delete or return all the Personal Data to the Customer after the end of the provision of Services relating to processing, and shall delete existing copies unless Relevant Law requires storage of the Personal Data.

4.4 ePlatform shall make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in this Agreement and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.

## **Annexure**

### **Data Processing**

#### Nature and Purpose of Processing

Logging in to the Customer lending platform (by Data Subjects) is managed (by ePlatform) through a variety of authentication methods including LDAP, SAML SSO, SIP2, OpenID and FTP. In a number of these cases the Customer to whom ePlatform is providing Services sends Personal Data to ePlatform to enable this authentication to occur accurately.

#### Type of Personal Data to be Processed

The Personal Data ePlatform receives on Customer patrons may include:

- Barcode/username
- Password
- Year level, for restricting access of certain titles to certain age groups
- Birthdate, if year level is not chosen by the Customer
- Name, if barcode is not chosen by the Customer
- Email (used to notify availability of a title that has been reserved)

#### Categories of Data Subject whose Personal Data will be Processed

- Patrons of a Customer which has contracted with ePlatform to provide an ebooks/audiobook lending platform
- Students at a school Customer which has contracted with ePlatform to provide an ebooks/audiobook lending platform
- Teachers at a school Customer which has contracted with ePlatform to provide an ebooks/audiobook lending platform;

## **SCHEDULE 5**

### **Data Processing Addendum**

This Data Processing Addendum ("Addendum") is supplementary to, and forms part of, the terms of use available at <https://www.eplatform.co/gb/terms-and-conditions/>, as updated from time to time, or the Wheelers ePlatform Ltd Online Service Agreement (the "Agreement") between Wheelers ePlatform Ltd (Australia), Wheeler ePlatform Ltd (New Zealand), WHEELERS KL SDN. BHD (Malaysia) (as applicable) ("ePlatform") and the entity or person(s) identified as Customer in the relevant customer account or Order Form referencing this Addendum (as applicable) ("Customer"). This Addendum applies where and to the extent that ePlatform is acting as a Processor or service provider (as applicable) of Personal Data on behalf of Customer under the Agreement. In the event of any conflict between this Addendum and the Agreement, this Addendum shall prevail to the extent of such conflict.

#### **1. Definitions and Interpretation**

In this Addendum, the following terms shall have the following meanings:

(a) "Applicable Privacy Laws" means all worldwide data protection and privacy laws and regulations applicable to the Personal Data in question including, where applicable: (i) European Privacy Laws; (ii) the Australian Privacy Act 1988 (Cth) ("Australian Privacy Laws"); (iii) the New Zealand Privacy Act 2020; (iv) the Philippines Republic Act No. 10173; (v) the Brazilian Data Protection Law (Brazil) No. 13,709/2018 (Portuguese: Lei Geral de Proteção de Dados Pessoais) (the "LGPD"); (vi) the California Consumer Privacy Act of 2018 and its regulations (the "CCPA"); and (vii) the Virginia Consumer Data Protection Act of 2021 (the "VCDPA"); in each case as amended, superseded or replaced from time to time.

(b) "Data Subject" means an identified or identifiable individual whose Personal Data is processed.

(c) "European Privacy Laws" means: (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection Regulation) (the "GDPR"); (ii) the GDPR as incorporated into United Kingdom domestic law pursuant to Section 3 of the European Union (Withdrawal) Act 2018 (the "UK GDPR"); (iii) the Swiss Federal Data Protection Act of 19 June 1992 and its corresponding ordinances (the "Swiss DPA"); (iv) EU Directive 2002/58/EC on Privacy and Electronic Communications; and (v) any national law made under or pursuant to items (i) – (iv); in each case as amended, superseded or replaced from time to time.

(d) "Personal Data" means any information relating to an identified or identifiable individual or any other information defined as 'personal data' or 'personal information' under Applicable Privacy Laws.

(e) "Restricted Transfer" means (i) where the EU GDPR applies, a transfer of Personal Data from the EEA to a country outside the EEA which is not subject to an adequacy determination by the European Commission; (ii) where the UK GDPR applies, a transfer of Personal Data from the UK to any other country which is not based on adequacy regulations pursuant to Section 17A of the UK GDPR; and (iii) where the Swiss DPA applies, a transfer of Personal Data to a country outside of Switzerland which is not included on the list of adequate jurisdictions published by the Swiss Federal Data Protection and Information Commissioner.

(f) "SCCs" means: (i) where the GDPR applies, the standard contractual clauses annexed to the European Commission's Decision (EU) 2021/914 of 4 June 2021, as may be amended, superseded or replaced from time to time.

(g) "UK Addendum" means the International Data Transfer Addendum (version B1.0) issued by the Information Commissioner's Office under s.119(A) of the UK Data Protection Act 2018, as may be amended, superseded or replaced from time to time.

(h) The terms "Controller", "Processor", "Data Subject" and "processing" have the meanings given to them in Applicable Privacy Laws or, if not defined therein, the GDPR (and "process", "processes" and "processed" shall be interpreted accordingly) and the terms "Business" and "Service Provider" have the meanings given to them in the CCPA.

(i) Any capitalised terms used but not defined in this Addendum shall have the meanings given to them under the Agreement.

## 2. Processing of Personal Data

2.1 Relationship of the parties: Customer is a Controller or Business (as applicable) of the Personal Data described in Annex 1.B (the "Data") and ePlatform shall process the Data solely as a Processor or Service Provider (as applicable) on behalf of Customer. ePlatform and Customer shall each comply with their respective obligations under Applicable Privacy Laws and further guidance from data protection authorities with respect to such processing. Where the concepts of Controller and Processor are not expressly contemplated by Applicable Privacy Laws, the parties' obligations in connection with this Addendum shall be interpreted under those Applicable Privacy Laws to align as closely as possible with the scope of those roles while still complying fully with those Applicable Privacy Laws.

2.2 Purpose limitation: ePlatform shall process the Data as necessary to perform its obligations under the Agreement and strictly in accordance with the documented instructions of Customer (the "Permitted Purpose"). ePlatform shall not: (i) retain, use, disclose or otherwise process the Data for any purpose other than the Permitted Purpose (including for its own commercial purpose), except where otherwise required by any law applicable to ePlatform; or (ii) "sell" the Data within the meaning of the CCPA, VCDPA or otherwise. ePlatform shall immediately inform Customer if it becomes aware that Customer's processing instructions infringe Applicable Privacy Laws but without obligation to actively monitor Customer's compliance with Applicable Privacy Laws. The parties acknowledge that Customer's transfer of Data to ePlatform is not a "sale" of Personal Data within the meaning

of Applicable Privacy Laws and ePlatform provides no monetary or other valuable consideration to Customer in exchange for the Data.

2.3 International transfers: The Controller authorises the Processor to transfer Client Data away from the country in which such data was originally collected. To the extent that ePlatform transfers the Data (or permits the Data to be transferred) to a country other than the country in which the Data was first collected, it shall first take such measures as are necessary to ensure that the transfer is made in compliance with Applicable Privacy Laws. Such measures may include (without limitation) transferring the Data to a recipient that has executed standard contractual clauses adopted by the European Commission, UK Secretary of State or Information Commissioner's Office or Brazilian Data Protection Authority (as applicable) or transferring the Data to a recipient that has executed a contract with ePlatform that ensures the Data will be protected to the standard required by Applicable Privacy Laws. ePlatform will also protect the Data in a way that overall provides comparable safeguards to the country in which the Data was first collected.

2.4 Standard contractual clauses: To the extent that the transfer of Data from Customer to ePlatform involves a Restricted Transfer, the SCCs shall be incorporated by reference and form an integral part of this Addendum with Customer as "data exporter" and ePlatform as "data importer". For the purposes of the SCCs: (i) the module two (controller to processor) terms shall apply and the module one, three and four terms shall be deleted in their entirety; (ii) in Clause 9, Option 2 shall apply; (iii) in Clause 11, the optional language shall be deleted; (iv) in Clause 17, Option 1 shall apply and the SCCs shall be governed by Irish law; (v) in Clause 18(b), disputes shall be resolved before the courts of Ireland; (vi) the Annexes of the SCCs shall be populated with the information set out in the Annexes to this DPA; and (vii) if and to the extent the SCCs conflict with any provision of the Agreement (including this DPA), the SCCs shall prevail to the extent of such conflict.

2.4.a. UK transfers: In relation to Data that is protected by the UK GDPR, the SCCs as incorporated under Section 2.4 shall apply with the following modifications: (i) the SCCs shall be amended as specified by the UK Addendum, which shall be incorporated by reference; (ii) Tables 1 to 3 in Part 1 of the UK Addendum shall be deemed completed using the information contained in the Annexes of this DPA; (iii) Table 4 in Part 1 of the UK Addendum shall be deemed completed by selecting "importer"; and (iv) any conflict between the SCCs and the UK Addendum shall be resolved in accordance with Section 10 and Section 11 of the UK Addendum.

2.4.b. Swiss transfers: In relation to Data that is protected by the Swiss DPA, the SCCs as incorporated under Section 2.4 shall apply with the following modifications: (i) references to "Regulation (EU) 2016/679" shall be interpreted as references the Swiss DPA; (ii) references to "EU," "Union," and "Member State" shall be replaced with "Switzerland"; (iv) references to the "competent supervisory authority" and "competent courts" shall be interpreted as references to the "Swiss Federal Data Protection and Information Commissioner" and the "competent Swiss courts"; and (v) the SCCs shall be governed by the laws of Switzerland and disputes shall be resolved before the competent Swiss courts.

2.5 Confidentiality of processing: ePlatform shall ensure that any person that it authorises to process the Data (including ePlatform's staff, agents and subcontractors) (an "Authorised

Person") shall be subject to a strict duty of confidentiality (whether a contractual duty or a statutory duty). ePlatform shall ensure that all Authorised Persons process the Data only as necessary for the Permitted Purpose.

2.6 Security: ePlatform shall implement appropriate technical and organisational measures to protect the Data from the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, access to the Data (a "Security Incident"). At a minimum, such measures shall include the measures identified at the url <https://www.eplatform.co/gb/trust-and-safety/>. Customer acknowledges that ePlatform may update or modify the Security Measures from time to time by publishing these at the url <https://www.eplatform.co/gb/trust-and-safety/> provided that such updates and modifications do not result in a degradation to the overall level of security.

2.7 Subprocessing: Data Controller hereby provides Data Processor with general written authorization to engage Sub-Processors to access and process Personal Data in connection with the Services.

The Data Processor may continue to use all Sub-Processors already engaged by the processor as of the Effective Date, subject to meeting the obligations specified in this Clause.

The Data processor can make changes to its sub-processors provided that:

2.7.a ePlatform provides reasonable prior notice at least 14 days before the proposed addition or replacement of any Subprocessor by posting details at the url <https://www.eplatform.co/gb/sub-processors/>, in order to allow Customer to raise any reasonable objections on grounds of data protection;

2.7.b ePlatform imposes data protection terms on any Subprocessor it engages that ensure substantially the same standard of protection provided under this Addendum and ePlatform remains fully liable for any breach of this Addendum caused by an act, error or omission of its Subprocessors.

ePlatform's current Subprocessors are identified at the url <https://www.eplatform.co/gb/sub-processors/>. For the purposes of Clause 9(c) of the SCCs, Customer acknowledges that ePlatform may be restricted from disclosing Subprocessor agreements to Customer due to confidentiality obligations. Where ePlatform cannot disclose a Subprocessor agreement to Customer, Customer shall provide all information (on a confidential basis) it reasonably can in connection with such agreement.

The Data Controller authorises the Processor to share your Personal Data with Sub-Processors in order to provide its Services.

2.8 Cooperation and Data Subjects' rights: ePlatform shall provide all reasonable and timely assistance to Customer to enable Customer to respond to: (i) any request from a Data Subject to exercise any of its rights under Applicable Privacy Laws (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a Data Subject, regulator or other third party in connection with ePlatform's processing of the Data. In the event that any such

request, correspondence, enquiry or complaint is made directly to ePlatform, ePlatform shall promptly inform Customer providing full details of the same.

2.9 Data Protection Impact Assessment: ePlatform shall provide Customer with all such reasonable and timely assistance as Customer may require in order to comply with its obligation under Applicable Privacy Laws to conduct data protection impact assessments and, if necessary, to consult with its relevant data protection authority.

2.10 Security Incidents: Upon becoming aware of a Security Incident, ePlatform shall inform Customer without undue delay and shall provide all such timely information and cooperation as Customer may reasonably require in order for Customer to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) Applicable Privacy Laws. ePlatform shall further take all such measures and actions as are reasonably necessary to remedy or mitigate the effects of the Security Incident and keep Customer informed of all material developments in connection with the Security Incident. Customer will not communicate or publish any notice or admission of liability concerning any Security Incident which directly or indirectly identifies ePlatform (including in any legal proceeding or in any notification to regulatory authorities or affected Data Subjects) without ePlatform's prior approval, unless Customer is compelled to do so under applicable law. In any event, Customer shall provide ePlatform with reasonable prior written notice of any such communication or publication.

2.11 Deletion or return of Data: Upon termination or expiry of the Agreement, ePlatform shall (at Customer's election) destroy or return to Customer all Data (including all copies of the Data) in its possession or control. This requirement shall not apply to the extent that ePlatform is required by any law to retain some or all of the Data, in which event ePlatform shall isolate and protect the Data from any further processing except to the extent required by such law until deletion is possible.

2.12 Audit: Upon request, ePlatform shall supply a summary copy of an audit report(s) to Customer, which reports shall be subject to the confidentiality provisions of the Agreement. ePlatform shall also respond to any written audit questions submitted to it by Customer, provided that Customer shall not exercise this right more than once per year. Customer agrees that Customer shall exercise its rights under Clause 8.9 of the SCCs by instructing ePlatform to comply with the audit measures described in this Section 2.12.

**Notices.** All notices and communications given under this Agreement must be in writing and will be delivered personally, sent by post or sent by email to the address or email address set out in the heading of this Agreement at such other address as notified from time to time by the Parties changing address.

### **Compliance with the Laws and Regulations**

The Data Controller warrants that it will ensure that its instructions will comply with all Applicable Data Protection Law, regulations and rules applicable in relation to the Data and

that the Data is collected lawfully by the Data Controller or on its behalf and provided to the data Processor pursuant to such laws, rules and regulations.

The Controller will also ensure that the processing of Personal Data in accordance with its instructions will not cause or result in the Data Processor or data Controller breaching any laws, rules or regulations.

The Data Controller is responsible for reviewing the information available from the Processor relating to data security pursuant to the Agreement and making an independent determination as to whether the Service meets its requirements and legal obligations as well as its obligations under this Agreement.

The Data Controller will not access or use Controller's Data except as provided in the Agreement, as necessary to maintain or provide the Service or as necessary to comply with the law or binding order of a governmental, law enforcement or regulatory body.

The Data Controller is responsible for any liability or expenses arising from Processor's compliance with its instructions or requests pursuant to the Agreement which fall outside the standard functionality made available through the Service, including transferring the Data to third-party services outside of Processor's services.

## **ANNEXES**

### **ANNEX I. A. LIST OF PARTIES**

#### **Data exporter(s):**

Name: The entity identified as the "Customer" on the Order Form or the name specified in Customer's account.

Address: The Customer's Billing Address specified on the Order Form or the address specified in Customer's account.

Contact person's name, position and contact details: The Primary Contact Name, Primary Contact Position and Primary Contact Email specified on the Order Form or the contact information specified in a Customer's account.

Activities relevant to the data transferred under these Clauses: The data exporter is a customer of the data importer and utilising the data importer's services on [www.eplatform.co](http://www.eplatform.co) or the allocated Customer specific URL as per the Order Form to facilitate lending ebooks and audiobooks to school and library patrons.

Role (controller/processor): Controller

Name: The authorized party who signed the DPA on the data exporter's behalf.

**SIGNATURE AND DATE: BY USING THE SERVICES TO TRANSFER PERSONAL DATA TO THE DATA IMPORTER, THE DATA EXPORTER WILL BE DEEMED TO HAVE SIGNED THIS ANNEX I**

**Data importer(s):**

Name: The ePlatform entity identified on the Order Form.

Address: The ePlatform entity's address specified on the Order Form.

Contact person's name, position and contact details:

Matthew Gilmour, Managing Director, dpo@eplatform.co

Representative contact details:

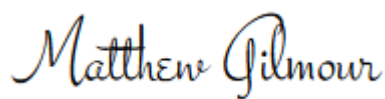
James Richmond, Office 42 Vantage Point Business Village, Mitcheldean, Gloucester, GL17 0DD.

Activities relevant to the data transferred under these Clauses: The data importer operates a cloud based library lending service enabling the lending of ebooks and audiobooks to library patrons.

Role (controller/processor): Procesor

**Name:** Matt Gilmour

**Authorised signature:**

A handwritten signature in blue ink that reads "Matthew Gilmour". The signature is written in a cursive style with a blue ink stroke.**Annex 1.B. DESCRIPTION OF TRANSFER**

Categories of data subjects:

- Licensed Users of the Service pursuant to the Agreement between ePlatform and Customer, which may include Customer's employees, students, library patrons, contractors or agents.

Categories of personal data: The categories of personal data are determined and controller by Customer in its sole discretion and may include:

- Access credentials of Licensed End Users;
- Contact details of Licensed End Users (e.g. name, email address, phone number, year level, month and year of birth); and
- any other personal data that Customer or Licensed Users included in comments, notes, highlights associated with ebook and audiobook content created in the Service.

Sensitive data transferred (if applicable) and applied restrictions or safeguards:

Any sensitive data included by Customer or Licensed Users added to Licensed User profiles, the extent of which is determined and controlled by Customer in its sole discretion. See Annex 2 for applied restrictions and safeguards.

Frequency of the transfer: Continuous

Nature of the processing: Processing of the Customer's and Licensed Users' usernames, passwords and contact details in order to access and manage the Services and provide patron and student access to ebook and audiobook content provided by the Service. Tracking in order to provide, enhance, improve and promote the Service.

Purpose(s) of the data transfer and further processing: Provision of the Service pursuant to the Agreement.

Period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period: The personal data will be retained until termination or expiry of the Agreement, in accordance with Section 2.11 of this Addendum.

#### **Annex 1.C. COMPETENT SUPERVISORY AUTHORITY**

The supervisory authority of the EEA Member State in which Customer is established or, if Customer is not established in the EEA, the EEA Member State in which Customer's representative is established or in which Customer's End Users are predominantly located.

#### **ANNEX 2 - TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA**

Refer to these details <https://www.eplatform.co/gb/trust-and-safety/>.

#### **ANNEX 3 – LIST OF SUB-PROCESSORS**

The Customer has authorised the use of the sub-processors set out at this url <https://www.eplatform.co/gb/sub-processors/>.