

## 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 (“Wheelers”) of certain services (defined in this Agreement as the “Services”).

### CONTENTS

This agreement consists of the following parts:

- Terms and Conditions
- Schedule 1 – DRM Services
- Schedule 2 – Related Services
- Schedule 3 - End User Terms for Adobe Content Server

### TERMS AND CONDITIONS

#### BACKGROUND:

- A. Wheelers distributes books, including eBooks.
- B. Wheelers has developed a system enabling libraries to lend eBooks to library members, known as the Wheeler’s ePlatform.
- C. The Library wishes to use the Wheeler’s ePlatform.
- D. This Agreement sets out the terms and conditions which apply to the Library’s use of the Wheeler’s ePlatform.

#### AGREEMENT:

1. **DEFINITIONS**
  - 1.1 In this Agreement unless the context otherwise requires:

**Affiliate** means a Library who is part of a Consortium.

**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 Library by Wheelers confirming online registration by the Library for the Services.

**Consortium** means a group of Affiliates who have the ability to Share eBooks using the ePlatform.

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

**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 which are available to Members of the Library via the Portal using the ePlatform to manage digital rights.

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

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

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

**Fees** means any amounts payable by the Library to Wheelers for provision of the Services as set out in the Confirmation Email and/or as agreed between the Library and Wheelers 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 Wheelers' website.

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

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

**Member** means any person who the Library advises Wheelers (in the manner set out in clause 6.1) is a current member of the Library.

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

**Non-DRM Content** means eBooks which are available to Members of the Library via the Portal but which do not, in the reasonable opinion of Wheelers, require use of the ePlatform to manage digital rights.

**Portal** means the website hosted by Wheelers and used by Members of the Library to access the Library's DRM Content and Non-DRM Content.

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

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

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

**Share** means allowing a Member of an Affiliate in the same Consortium access to an eBook on Loan.

**Shared eBook** means any eBook which an Affiliate has made available to Share.

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

**Third Party eBook** means an eBook which has been sourced by the Library from a person other than Wheelers.

**Wheelers** means Wheelers ePlatform Limited together with its successor and assigns.

**Wheelers' eBook** means an eBook sourced by the Library from Wheelers.

1.2 In this Agreement unless the context requires otherwise:

- a. the singular includes the plural and vice versa;
- b. the headings are used for convenience only and do not affect the interpretation of this Agreement;
- c. a reference to a document includes the document as modified from time to time and any document replacing it;
- 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;
- e. the word "person" includes a natural person and any body or entity whether incorporated or not; and
- f. the words "in writing" include any communication sent by letter, facsimile transmission or email.

## 2. CONTENT

2.1 DRM Content will comprise:

- a. Wheelers' eBooks; and

- b. Third Party eBooks provided by the Library to Wheelers in a suitable digital format for use on the ePlatform, subject to the Library procuring the necessary rights for Wheelers to make those eBooks available to Members of the Library on Loan.
- 2.2 The Library may provide Wheelers with eBooks to comprise DRM Content in a suitable digital format for use on the Portal. eBooks acquired by the Library from Wheelers will be automatically added to the DRM Content.
- 2.3 Wheelers reserves the right to remove any eBook from the DRM Content or the Non-DRM Content where Wheeler's considers (acting reasonably) that access to such eBook by Members in the manner contemplated by this Agreement has or may result in the infringement of the intellectual property rights of any person. Wheelers will notify the Library without delay of any action taken or contemplated by Wheelers under this clause.
- 3. **SERVICES**
- 3.1 Subject to payment of the applicable Fees (if any), Wheelers will supply the Library 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 Wheelers in accordance with:
  - a. the relevant specifications set out in Schedule 1 and Schedule 2 to this Agreement; and
  - b. any other specifications as may be agreed in writing between Wheelers and the Library.
- 3.3 Wheelers will ensure that the ePlatform uses advanced methods which meet all relevant generally accepted industry practices to:
  - a. keep eBooks secure and under the control of Wheelers (subject to the rights of the Library under this Agreement and access by Members in the manner contemplated by this Agreement); and
  - b. prevent Members from copying or printing eBooks which comprise the DRM Content (except to any extent which may be expressly permitted by the holders of the distribution rights for such eBooks); and
  - c. protect eBooks from Misappropriation.
- 3.4 In the course of providing the DRM Services, Wheelers agrees:
  - a. to Deal with DRM Content for the purposes contemplated by this Agreement and for no other purpose;
  - b. to manage Loans of DRM Content on the ePlatform;
  - c. to provide the Library with details of Loans to Members in a suitable format to enable the Library to update its records;

- d. to provide Members with single electronic copies of eBooks which make up DRM Content;
  - e. to monitor the ePlatform for evidence of unauthorised use of eBooks and promptly upon becoming aware of any unauthorised use of eBooks Wheelers will inform the Library and take all reasonable steps to cause such activity to cease and to prevent any recurrence;
  - f. to respond promptly to the Library's requests for information in connection with any alleged copyright infringement or other unauthorised use of eBooks; and
  - g. to comply with all laws and regulations applicable to the performance of this Agreement by Wheelers.
- 3.5 The Library acknowledges that provision of the Services under this Agreement may not be completely uninterrupted and/or error free and that the sole obligation of Wheelers 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 Wheelers reserves the right to make modifications to the operation, performance and/or functionality of the Portal and the ePlatform from time to time (at Wheelers' sole discretion). Where Wheelers considers that such modifications require changes to the Library Website, Wheelers will provide the Library with as much advance notice as is reasonable in the circumstances.
- 3.7 The Library acknowledges and agrees that Wheelers may:
- a. include features and functionality on the Portal which provide Members with the ability to send requests to the Library to purchase eBooks and hard copy books from Wheelers; and
  - b. display its branding, trademarks, logos and/or other marketing or promotional materials of Wheelers and/or third parties on the Portal.
- 3.8 Subject to the Library receiving written confirmation from Wheelers that the Library is permitted to access services necessary for the Library to enjoy the benefit of the "Consortium Library" module, Wheelers will supply the Library with the Services necessary to Share eBooks and the provisions of clauses 3.9 to 3.11 (inclusive) shall apply.
- 3.9 The Library acknowledges that the ability of Wheelers to allow an eBook to be Shared is governed by the rights granted to Wheelers by third parties and as a result certain eBooks in the Library's collection will not be eligible to be Shared eBooks. Wheelers gives no representation or warranty that it possesses or will obtain the grant of the rights necessary to allow all eBooks in the Library's collection (whether currently or in the future) to be Shared eBooks.
- 3.10 The Library acknowledges and agrees that Wheelers may from time to time:

- a. make rules relating to the establishment of Consortium and the persons who may join each Consortium as Affiliates, and to vary such rules;
  - b. disestablish any Consortium and/or remove any person as an Affiliate of any Consortium where this is necessary to comply with the rules referred to in clause 2.3(a);
  - c. publish specifications for the Services described in clause 2.1, and vary such specifications;
  - d. designate certain eBooks as being unavailable to Share or as being available to Share with a limited number of Affiliates 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
  - e. alter the status of any Shared eBook to a Private eBook 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 Wheelers will notify the Library without delay of any action taken by Wheelers under clause 3.10.
- 3.12 Where the Library and/or its Members 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 Library shall pay the Fees to Wheelers in the manner set out in this Agreement. Fees are stated exclusive of Goods and Services Tax which shall be payable by the Library in addition to the Fees.
- 4.2 All payments made by the Library to Wheelers will be:
- a. remitted as directed by Wheelers; and
  - b. made in the Currency.
- 4.3 Wheelers will keep true and particular records of Loans made to Members.
- 4.4 Wheelers will issue invoices for Fees on a monthly basis, and subject to clause 4.7 the Library 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 Wheelers will notify the Library 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 Library fails to pay any amount due under this Agreement on or before the due date then, without prejudice to Wheelers' other rights and remedies, Wheelers may require the Library 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 Wheelers may set off any Fees and other amounts due to Wheelers against any monies owing by Wheelers to the Library.

5. **LIBRARY'S OBLIGATIONS**

- 5.1 The Library shall provide and operate, at its own expense, the Library 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 Wheelers in writing, Wheelers shall have no obligation to reimburse the Library for any cost or expense incurred by the Library in complying with the Library'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 Wheelers provides the Services.
- 5.2 Without limiting clause 5.1, the Library 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 Library will assign personnel in appropriate numbers and with appropriate skills to enable efficient use of the Services by Members and to provide Members with all technological and other support required in connection with Members' use of the Services.
- 5.4 The Library agrees to promptly inform Wheelers of any errors or omissions in the Services of which the Library becomes aware.
- 5.5 The Library grants Wheelers the right to incorporate the Library's name, logos, trademarks, colour schemes and other distinguishing marks and features into the Portal.
- 5.6 The Library 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 Wheelers in writing.
- 5.7 The Library undertakes and warrants:
- a. the supply of any Third Party eBooks to Wheelers under this Agreement and eBooks comprising Non-DRM Content and the use of such eBooks by Wheelers as contemplated by this Agreement will not violate any obligation that the Library owes to any third party or infringe upon the Intellectual Property rights of any person;
  - b. that the eBooks comprising Non-DRM Content do not contain any libellous, defamatory or unlawful material; and
  - c. to comply with all laws and regulations applicable to the performance of this Agreement by the Library.

## 6. MEMBERS

- 6.1 The Library will provide Wheelers with such information relating to Members as may reasonably be required by Wheelers to verify that persons seeking access to DRM Content and Non-DRM Content are current Members of the Library. Information relating to Members will be provided in the format and updated with the frequency reasonably required by Wheelers.
- 6.2 The Library acknowledges that Wheelers' rights to distribute eBooks comprising the DRM Content may be subject to geographical restrictions and that Wheelers will be entitled to refuse to Loan such eBooks to Members who do not reside within the Territory.
- 6.3 The Library acknowledges and agrees that Wheelers will require Members to confirm acceptance of certain terms and conditions when taking eBooks from the Library's DRM Content on Loan, including (but not limited to):
- a. not to use eBooks for any unlawful or infringing purpose;
  - b. not to reproduce, license, sell or otherwise distribute the eBooks; and
  - c. to use eBooks exclusively as a reference or informational tool for that Member's use only.

## 7. PROTECTION MEASURES

- 7.1 The Library will use all reasonable endeavours to assist Wheelers 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):
- a. adoption of suitable policies and procedures by the Library;
  - b. establishment of dummy Member accounts for testing purposes;
  - c. allowing access to such accounts by Wheelers for the purposes of testing system performance and security; and
  - d. correction and/or adjustment of systems to deal with issues detected during testing.
- 7.2 The Library acknowledges and agrees that:
- a. the ePlatform will use software and other products which are licensed to Wheelers by third parties and that Wheelers is required to abide by the terms of the agreements under which such software and products are licensed; and
  - b. the terms set out in Schedule 3 to this Agreement (which Datalogics, Inc requires in connection with the use by Wheelers of Adobe Content Server software) are binding on the Library;
  - c. Wheelers may from time to time notify the Library in writing of additional terms and conditions which must be accepted by the Library in order for Wheelers to comply



with its obligations under licence agreements between Wheelers and third parties providing software and other products used in the ePlatform;

- d. terms and conditions notified by Wheelers to the Library under clause 7.2(c) shall form part of this Agreement and bind the Library unless the Library notifies Wheelers within 10 Business Days of receipt of the relevant notice under clause 7.1(c) that the Library does not accept such additional terms and conditions; and
- e. in the event that the Library notifies Wheelers under clause 7.2(d) that the Library does not accept the relevant terms and conditions, Wheelers may terminate this Agreement by giving written notice to the Library.

## 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:
  - a. a party breaches any of its material obligations under this Agreement; and
    - i. the breach is not capable of being remedied; or
    - 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
  - 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):
  - a. a receiver, receiver and manager, liquidator, provisional liquidator, administrator or controller is appointed in respect of that party or any of its property;
  - 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
  - c. the party is, becomes, or is deemed to be insolvent or bankrupt.
- 8.5 The Library and Wheelers acknowledge that a Library may request that Wheelers facilitate a transfer of all eBooks which comprise the DRM Content and the Non-DRM Content to another

person who will manage Loans to Members of the Library following termination of this Agreement. Wheelers will seek to comply with such request, subject to:

- a. all necessary consents being obtained;
- b. Wheeler's being satisfied (acting reasonably) that the transfer of eBooks will not result in the infringement of the intellectual property rights of any person; and
- c. the Library meeting Wheelers' reasonable costs and expenses (including management time) in seeking to comply with the Library's request (whether or not the requested transfer of eBooks is able to proceed).

8.6 Termination of this Agreement shall:

- a. not affect those provisions of this Agreement which are intended to continue after termination; and
- 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 Wheelers under this Agreement is not otherwise limited or excluded and to the extent permitted by law, the total liability of Wheelers 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 Wheelers' obligations under this Agreement is limited to the lesser of:

- a. the Fee paid by the Library for the relevant Service;
- b. the cost of re-performing the relevant Service; and
- c. the actual loss or damage suffered by the Library (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 Wheelers be liable for any loss of income or profits or any consequential, indirect or special damage or injury of any kind suffered by the Library, a Member or any other person.

10.3 Except for any rights the Library 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 Library agrees that the provisions of the Consumer Guarantees Act 1993 do not apply to any goods or services which are acquired by the Library 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 Library acknowledges and agrees that ownership of copyright and other intellectual and proprietary rights in the ePlatform and the Portal shall remain with Wheelers 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 Wheelers 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:

- a. personal delivery;
- 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
- 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 Library set out in the Confirmation Email and to the address for Wheelers 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 Wheelers 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 Library shall be deemed acceptance of such variations to the terms and conditions.

15. **GENERAL**

- 15.1 The Library shall not, without the prior written consent of Wheelers, 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 Wheelers eBook lending platform with unique URL for the Library, capable of providing the services and infrastructure for the Library to manage and loan eBooks to Members within a secure DRM environment.

Specifically includes:

- A web portal (Wheelers ePlatform) with the Library's own unique URL and logo to enable patrons to borrow and/ or reserve eBook titles. It includes user-friendly features for searching, browsing and filtering to facilitate selection.
- A web-based administrative access that enables Library staff to control specific ePlatform configurations such as loan parameters (within defined limits), reserve allowances, and user permissions, and to view reports on borrowing. .
- 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.
- Access to the Wheelers website or ePlatform Shop area for purchasing of new eBook titles licensed for Library lending.

Following an eBook purchase by the Library, notification of the unique URL for each eBook 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 student/patron is authorised to take Loans of eBooks 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 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. For further information on this please see FAQs area of the ePlatform website.

Wheelers will provide assistance to the Library in relation to setting up the link between the Library'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 ensures a single eBook is on Loan to a single Member 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 Library.

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

#### Uploading Library / 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:

- Use of the content on the ePlatform will not violate any obligation that the school / Library 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 / Library environment.
- Data supplied by the Library 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.

Fees for uploading content apply on a per batch basis. Current pricing may be viewed on the ePlatform website.

A Fee will be charged per eBook (invoiced at the time the eBook is loaded) relating to hosting, storage and lending of that eBook 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 Library content not requiring DRM protection. Data supplied by the Library must be in a suitable format and ready for upload.

It is the responsibility of the school / Library to ensure that use of the content on the ePlatform will not violate any obligation that the school / Library 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 / Library environment.

Fees apply on a per batch basis. Current pricing may be viewed on the ePlatform website.

#### Hosting Non-DRM Content

The ePlatform is available for hosting Library 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 Wheelers' costs (which Fee would be discussed and agreed at the relevant time).

#### Customisation of the Portal

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

Fees will be quoted by Wheelers 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”), Library and its Members will not:
  - (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;
  - (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;
  - (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;

- (d) obtain or attempt to obtain any materials or Information through any means not intentionally made available through the Service;
  - (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;
  - (f) engage in any systematic extraction of data fields, including without limitation E-mail addresses;
  - (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;
  - (h) transmit junk mail, spam, surveys, contests, pyramid schemes, chain letters, or other unsolicited E-mail or duplicative messages;
  - (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
  - (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 Wheelers 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 Wheelers may only process Data for the duration of the Agreement and within the scope of:

- (a) the nature and purpose of processing;
- (b) the types of Personal Data; and
- (c) the categories of Data Subject,

set out in the Annexure to this Schedule 4.

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

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

- 2.4 Wheelers shall ensure that all persons authorised by Wheelers 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, Wheelers shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including as appropriate:
- (a) the pseudonymisation and encryption of Personal Data;
  - (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - (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
  - (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, Wheelers 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 Wheelers shall take steps to ensure that any natural person acting under the authority of Wheelers who has access to Personal Data does not process such data except within the authority from the Library 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 Wheelers 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 Library. In the case of general written authorisation, Wheelers shall inform the Library of any intended changes concerning the addition or replacement of other processors, thereby giving the Library the opportunity to object to such changes.
- 3.2 Where Wheelers engages a Sub-Processor for carrying out specific processing activities on behalf of the Library, 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, Wheelers shall remain fully liable to the Library for the performance of the Sub-Processor's obligations.

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

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

- 4.2 Wheelers shall assist the Library 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 Wheelers.
- 4.3 At the choice of the Library, Wheelers shall delete or return all the Personal Data to the Library 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 Wheelers shall make available to the Library 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 Library or another auditor mandated by the Library.

## **Annexure**

### **Data Processing**

#### Nature and Purpose of Processing

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

#### Type of Personal Data to be Processed

The Personal Data Wheelers receives on Library 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 Library
- Name, if barcode is not chosen by the Library
- 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 Library which has contracted with Wheelers to provide an eBook/Audio lending platform
- Students at a school Library which has contracted with Wheelers to provide an eBook/Audio lending platform
- Teachers at a school Library which has contracted with Wheelers to provide an eBook/Audio lending platform;