

The Australian Directory of Philanthropy – Library Site Licence

This Agreement is made on the date set out in Item 1 of the Schedule.

Between the parties Philanthropy Australia Inc.
ABN 79 578 875 531
of Level 2, 55 Collins Street, Melbourne VIC 3000
(Philanthropy Australia)

The party named as the Licensee in Item 3 of the Schedule
(Licensee)

Recitals

A. The Licensee wishes to provide its registered library users with access to The Australian Directory of Philanthropy.

B. Philanthropy Australia agrees to provide the Licensee with access to The Australian Directory of Philanthropy on the terms of this Agreement.

The parties agree as follows:

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this Agreement are set out below.

Term	Meaning
Authorised User	any person meeting the description in Item 7 of the Schedule.
Business Day	a day on which banks are open for business in Melbourne excluding a Saturday, Sunday or public holiday in that city.
Content	the information and materials described in Item 5 of the Schedule.
Fee	the amount payable by the Licensee for the use of the Content as set out in Item 9 of the Schedule.
Government Agency	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
Nominated IP Address	any IP Address specified in Item 10 of the Schedule.
Website	the website specified in Item 6 of the Schedule.

1.2 Interpretation

In this Agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this Agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (d) A reference to a party to a document includes that party's successors and permitted assignees.
- (e) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors,

insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

- (f) No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this Agreement or that provision.

1.3 Interpretation of inclusive expressions

Specifying anything in this Agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

2 Licence of the Content

2.1 Grant of licence

- (a) Philanthropy Australia grants to the Licensee a non-exclusive and non-transferable licence to access and use the Content in Australia, subject to the terms of this Agreement.
- (b) Nothing in this Agreement confers on the Licensee any intellectual property rights in, or in connection with, the Content, except as licensee.

2.2 Terms of use

- (a) The Licensee must not, and must not authorise, permit, cause or procure any other person to:
- (1) use the Content for any other purpose other than the Purpose;
 - (2) make the Content accessible to anybody other than Authorised Users;
 - (3) lease, sub-license, lend, assign or transfer the Content;
 - (4) remove or obscure any copyright or trade mark notices on the Content;
 - (5) use any trade mark owned or used by Philanthropy Australia without the approval of Philanthropy Australia;
 - (6) print, download or electronically store more than a reasonable portion of the Content, having regard to the Purpose and any rights expressly granted by applicable copyright law;
 - (7) use any robot, spider, screen scraper, data aggregation tool or other automatic device or process to process, monitor, copy or extract any of the Content or the Website;
 - (8) access the Website from any premises or location outside the control of the Licensee; or
 - (9) reproduce, copy or supply to any person a copy of, or alter, modify, reverse engineer, disassemble, reverse assemble or reverse compile, the whole or any part of the Website or the Content except as expressly permitted by this Agreement.

- (b) The Licensee must:
- (1) use all reasonable efforts to protect the Content from unauthorised use, reproduction, distribution or publication;
 - (2) obtain all necessary approvals or consents required in addition to this licence for the use of the Content;
 - (3) promptly notify Philanthropy Australia where it becomes aware of any unauthorised use of the Content; and
 - (4) provide Philanthropy Australia with assistance in any investigation of unauthorised use of the Content.

2.3 Access to the Content

Philanthropy Australia may restrict access to the Content via the Website to prevent access by any computer which may be using an IP address other than a Nominated IP Address.

3 Fee

The Licensee must pay the Fee in accordance with the timing and other requirements set out in Item 9 of the Schedule.

4 Term and Termination

- (a) This Agreement shall run for the Term, as defined in Item 2 of the Schedule.
- (b) If the Licensee breaches any term or condition of this Agreement, Philanthropy Australia may;
 - (1) notify the Licensee of the breach, require that the Licensee remedy the breach within 5 Business Days; and
 - (2) terminate this Agreement if the Licensee has not complied with the terms of the notice in paragraph (1) above.
- (c) Philanthropy Australia may immediately terminate this Agreement if the Licensee becomes insolvent.
- (d) Once this Agreement expires or is terminated, the Licensee must immediately return the copy of the Content provided to them, and destroy any other copies of the Content that they control, whether stored electronically or otherwise.

5 Limited warranty

To the extent permitted by law:

- (a) Philanthropy Australia does not guarantee or warrant the accuracy, adequacy or completeness of the Content, the availability of the Website or that the Website will be free from viruses or defects;
- (b) all Content is provided on an 'as is' and 'as available' basis and without guarantees or warranties of any kind, either express or implied;

- (c) all terms implied by law, except those that can not be lawfully excluded, are excluded; and
- (d) Philanthropy Australia reserves the right to modify the Content without notice.

6 Limitation of liability

- (a) Subject to any responsibilities implied by law and which cannot be excluded, Philanthropy Australia, and its directors, employees, agents and contractors, are not liable to the Licensee for any losses, damages, liabilities, claims and expenses (including but not limited to legal costs and defence or settlement costs) whatsoever, whether direct, indirect or consequential, arising out of or referable to any Content, or to access or use of the Websites by the Licensee, howsoever caused, whether in contract, tort including negligence, statute or otherwise.
- (b) The liability of Philanthropy Australia for breach of a condition or warranty implied by law, and which cannot be excluded, is limited to the extent permitted by law to, at Philanthropy Australia's option:
 - (1) the supply of the goods or services again;
 - (2) the repair of the goods; or
 - (3) the payment of the cost of having the goods or services supplied again or repaired.

7 Indemnity

The Licensee indemnifies, and will keep indemnified, Philanthropy Australia against any loss, damage or claim arising in any way, whether directly or indirectly, from any breach of this Agreement, or any claim by any third party in relation to the Content, as used by the Licensee.

8 Non-disclosure

The parties must not disclose any details of this Agreement or its negotiation to any third party except where required by law or with the consent of the other party.

9 Notices

A notice or other communication to a party under this Agreement (**Notice**):

- (a) must be in writing and in English;
- (b) may be given or made by personal delivery, pre-paid post, fax or email addressed to that party in accordance with the details nominated in the Schedule (or any alternative details nominated to the sending party by Notice); and
- (c) will be deemed to be given or made:
 - (1) if by leaving it at the address of that person, when left at that address;
 - (2) if by post, at 9am on the second Business Day following the date of posting;

- (3) if by fax, at the time the sender's transmission equipment indicates that the fax was sent in its entirety (unless the recipient informs the sender that the fax was illegible or incomplete within one Business Day of that time); and
- (4) if by email, when the email (including any attachment) comes to the attention of the recipient or a person acting on its behalf.

10 General

10.1 Governing law and jurisdiction

This Agreement is governed by the law in force in Victoria, Australia.

10.2 Invalidity and enforceability

- (a) If any provision of this Agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 10.2(a) does not apply where enforcement of the provision of this Agreement in accordance with clause 10.2(a) would materially affect the nature or effect of the parties' obligations under this Agreement.

10.3 Waiver

No party to this Agreement may rely on the words or conduct (including inaction) of any other party as a waiver of any right arising under or in connection with this Agreement unless the waiver is in writing and signed by the party granting the waiver. In this clause 10.3, 'waiver' includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

10.4 Variation

A variation of any term of this Agreement must be in writing and signed by the parties.

10.5 Assignment of rights

- (a) Rights arising out of or under this Agreement are not assignable by a party without the prior written consent of the other party.
- (b) A breach of clause 10.5(a) by a party entitles the other party to terminate this Agreement.
- (c) Clause 10.5(b) does not affect the construction of any other part of this Agreement.

10.6 Further action

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this Agreement and the transactions contemplated by it.

10.7 Entire agreement

This Agreement states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

10.8 No reliance

Neither party has relied on any statement by the other party not expressly included in this Agreement.

10.9 Counterparts

This Agreement may be executed in any number of counterparts.

10.10 Relationship of the parties

- (a) Nothing in this Agreement gives a party authority to bind any other party in any way.
- (b) Nothing in this Agreement imposes any fiduciary duties on a party in relation to any other party.

10.11 Exercise of rights

- (a) Unless expressly required by the terms of this Agreement, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Agreement.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Agreement. Any conditions must be complied with by the party relying on the consent, approval or waiver.

10.12 Survival

Clauses 5, 6, 7 and 8 survive the termination or expiry of this Agreement.

Schedule

- Item 1:** Date of Agreement: [2010]
- Item 2:** Term 12 months commencing [2010], and any further terms of 12 months where the parties agree to continue and agree to any changes to the Fee in advance.
- Item 3:** Licensee details
Name: []
ABN: [insert]
Address: [.]
Phone: []
Fax: []
Email: []
- Item 4:** Philanthropy Australia details
Address: Level 2, 55 Collins Street, Melbourne VIC 3000
Phone: 03 9662 9299
Fax: 03 9662 2655
Email: directory@philanthropy.org.au
- Item 5:** Content The Australian Directory of Philanthropy as accessible via the Website.
- Item 6:** Website The section of <http://www.philanthropy.org.au> accessible through the landing page <http://www.philanthropy.org.au/directory>.
- Item 7:** Authorised Users On-site users of any library owned and operated by the Licensee.
- Item 8:** Purpose Research and study by Authorised Users.
- Item 9:** Fee \$1200 per annum (including GST), payable in advance.
- Item 10:** Nominated IP Addresses

Signing page

Executed as an agreement

Signed for
Philanthropy Australia Inc.
by its representative

sign here ► _____
Representative

print name _____

in the presence of

sign here ► _____
Witness

print name _____

Signed for
[insert Licensee entity full name]
by its representative

sign here ► _____
Representative

print name _____

in the presence of

sign here ► _____
Witness

print name _____
