

AND THE MEMBER COUNCILS AGREE:

1. Definitions & Interpretation

1.1 Definitions

- 1.1.1 “**Act**” means the Local Government Act 1999;
- 1.1.2 “**Administration Costs**” means all costs incurred by the Host Council including, but not limited to, the Library Network Administrator (salary, training costs, sick leave, annual leave, long service leave and reimbursement of expenses), costs for time incurred by any other staff member or consultant, all costs associated with any costs incurred under the Operating Guidelines;
- 1.1.3 “**Billing Period**” means the quarterly periods of each financial year when Tax invoices are issued by the Host Council;
- 1.1.4 “**Costs Schedule**” means the Cost Schedule attached to this Memorandum;
- 1.1.5 “**Host Council**” means <Council Name>;
- 1.1.6 “**library material**” means any material, including but not limited to books, journals, papers, tapes, computer programmes owned or else held by an individual Council and available to be borrowed, rotated and used by the other Member Councils under the Network;
- 1.1.7 “**Library Network Administrator**” is the person responsible for the administration of <Library Network Name>, and is employed or contracted by the Host Council;
- 1.1.8 “**Committee**” means the group of representatives appointed by each of the Member Councils in accordance with Clause 4.1 of this Memorandum;
- 1.1.9 “**Network**” means the library and computer system which the Member Councils are connected to, to facilitate the borrowing and swapping of library material by the Member Councils in accordance with this Memorandum and the Operating Guidelines;
- 1.1.10 “**Memorandum**” means this Memorandum of Understanding;
- 1.1.11 “**Network Costs**” means the costs incurred by the Host Council in hosting the Network, including but not limited to, hardware, software licences, lease payments, interest and fees incurred on leases, communication costs, stationery, courier charges and any other resources associated with operating the network.
- 1.1.12 “**Operating Guidelines**” means the guidelines (as amended from time to time) referred to in Clause 6 of this Memorandum;

- 1.1.13 **“Other Member Councils”** means the <Council Name> Council and <Council Name> Council.

1.2 Interpretation

- 1.2.1 The Background set out above forms part of this Memorandum and the Member Councils agree that the Background is true and accurate.
- 1.2.2 Unless the contrary intention appears:
- 1.2.2.1 Words noting the singular shall include the plural and vice versa.
 - 1.2.2.2 Reference to any gender shall include every other gender and words denoting individuals shall include corporations and vice versa.
 - 1.2.2.3 Reference to any Act of Parliament, statute or regulation shall include any amendment currently enforce at the relevant time and any Act of Parliament, statute or regulation enacted or passed in substitution therefore.
 - 1.2.2.4 Headings are for convenience of reference only and do not affect the interpretation or construction of this Memorandum.
 - 1.2.2.5 A requirement in this Memorandum for liaison and consultation is a requirement for full and frank discussion and includes a requirement where necessary and appropriate, for full disclosure of relevant information and material.

2. Term

- 2.1 The term of this Memorandum shall be five (5) years commencing on <Enter Date> and expiring on the <Enter Date>, unless otherwise agreed or extended by the Member Councils in writing.
- 2.2 The term shall be reviewed by the Member Councils not more than twelve (12) months and not less than six (6) months prior to the expiration of the term subject to the term being reviewed prior to this period.

3. Negotiate In Good Faith

The Member Councils agree that they will cooperate with each other and at all times act in good faith and with the joint objective of successfully and expeditiously concluding and carrying out all of the arrangements and agreements contemplated in this Memorandum.

4. The Member Councils Obligations

The Member Councils agree that each of them shall have the following obligations in respect of <Library Network Name>;

4.1 **Host Council**

On behalf of the Other Member Councils, the Host Council agrees;

4.1.1 **Administration**

- 4.1.1.1 to administer the Network in accordance with this Memorandum and the Operating Guidelines; and
- 4.1.1.2 to be accountable to the Other Member Councils in a manner determined for the administration of the Network and the facilitation of the Network;

4.1.2 **Membership of the Committee**

- 4.1.2.1 to appoint the Chief Executive Officer or delegated officer and the Library Manager or nominee to the Committee;
- 4.1.2.2 to appoint a proxy for each of the representatives in Clause 4.1.2.1.
- 4.1.2.3 to delegate such powers to the representatives as are required and necessary to give effect to this Memorandum, the Operating Guidelines and the Network;
- 4.1.2.4 to delegate such powers to the Chief Executive Officer of the Host Council as are required and necessary to give effect to the preparation, amendment and implementation of the Operating Guidelines;

4.1.3 **Finances**

- 4.1.3.1 to administer and account to the Other Member Councils in accordance with the method set out in the Cost Schedule for the Network Costs and the Administration Costs and to issue to the Other Member Councils on a quarterly basis a tax invoice specifying the amount of the Network Costs and Administration Costs that each of the Other Member Councils are responsible for during that Billing Period. An adjustment will be made in the following July invoice to reflect the actual expenditure for the previous year.
- 4.1.3.2 to prepare with the assistance from the Other Member Councils, in accordance with this Memorandum, the budgets for the Network; and
- 4.1.3.3 to meet all auditing requirements for all monies received and paid for in relation to the Network;

4.1.4 **Library Network Administrator**

- 4.1.4.1 to enter into, on behalf of the Other Member Councils, an enterprise bargaining agreement (“**EBA**”) or other employment or contractual arrangements with the Library Network Administrator on terms and conditions that the Host Council determines appropriate;
- 4.1.4.2 to instruct the Library Network Administrator in accordance with directions given to it by the Committee (if any);
- 4.1.4.3 to provide the Library Network Administrator with office facilities, office equipment and resources, (including but not limited to stationery, postage resources, and telephone facsimile and photocopying facilities) and any other administrative assistance or resources required to be provided to enable the Library Network Administrator to effectively carry out their duties;
- 4.1.4.4 to nominate a representative (which at the commencement of the Memorandum shall be the Chief Executive Officer) to;
 - (a) liaise with the Library Network Administrator in relation to the terms, conditions and operation of the Network; and
 - (b) supervise the conduct of and compliance of the Library Network Administrator with the EBA;
- 4.1.4.5 not to terminate the Library Network Administrator without the approval of the Other Member Councils. For the purposes of this clause, “approval” means the written approval of a majority of the Other Member Councils received after a request has been made by the Host Council to the Other Member Councils requesting their vote;

4.2 **The Other Member Councils**

The Other Member Councils agree;

4.2.1 **Finance**

to pay to the Host Council within fourteen (14) days of having received a tax invoice the amount specified in the tax invoice (GST inclusive) given during each Billing Period in accordance with Clause 4.1.3.1 for its share of the Network Costs and the Administration Costs.

4.2.2 **Membership of the Committee**

- 4.2.2.1 to appoint the Chief Executive Officer or delegated officer and the Library Manager or nominee to the Committee;

- 4.2.2.2 to appoint a proxy for each of the representatives in Clause 4.2.2.1;
- 4.2.2.3 to delegate such powers to the representatives as are required and necessary to give effect to this Memorandum, the Operating Guidelines and the Network;
- 4.2.2.4 to delegate such powers to the Chief Executive Officer of the relevant Member Council as are required and necessary to give effect to the preparation, amendment and implementation of the Operating Guidelines.

4.3 All Member Councils

The Member Councils agree:

4.3.1 Reporting

To consider reports and recommendations from its respective representatives on the Committee in relation to the administration of the Network.

5. Library Network Committee

- 5.1 The Member Councils agree to establish a Committee for the purposes specified below.
- 5.2 The Committee representatives shall meet at the times and places determined by the Committee (but in any case at least quarterly) for the purposes of;
 - 5.2.1 considering the strategic direction of the Network;
 - 5.2.2 considering any major policy issues in relation to the Network; and
 - 5.2.3 reviewing, discussing and preparing budgets for the Network.
- 5.3 Each Member Council representative on the Committee shall be responsible for exercising their delegated authority and for the reporting back to their respective Council upon the exercise of those powers.
- 5.4 In the event of a conflict arising between the representatives of the Committee or if the Committee is divided in its votes on a decision required to be made by it, then the Committee will be required to report to their respective Councils for their determination.
- 5.5 The Member Councils agree that their respective Chief Executive Officer shall have delegated to them, pursuant to Section 44 of the Act, the necessary powers to make such decisions on behalf of the respective Member Council with respect to the Network.
- 5.6 The Committee shall at its first meeting (and annually thereafter) appoint amongst the representatives a Chairperson who shall hold office for a term of

one (1) year but is eligible for reappointment for a further term, unless he/she resigns in which case the Committee shall appoint a new Chairperson to chair the meetings.

- 5.7 In the event that the appointed Chairperson is absent from a Committee meeting the representatives present shall appoint an acting Chairperson, who shall preside over that meeting or until the Chairperson is present.

6. **Operational Guidelines**

- 6.1 Upon execution of this Memorandum, the Chief Executive Officer or delegate of each of the Member Councils shall prepare and implement Operational Guidelines which the Chief Executive Officers or delegates shall be capable of amending from time to time as the Chief Executive Officers or delegates see fit.
- 6.2 Notwithstanding the provisions of this Memorandum, the Member Councils agree that the Operational Guidelines shall be the operative document that facilitates the operational management of the Network.
- 6.3 The Member Councils shall delegate to their respective Chief Executive Officers such powers as are required and necessary to prepare and amend the Operational Guidelines and to manage the network in accordance with the Operational Guidelines.
- 6.4 The Councils agree to negotiate and cooperate with each other at all times and to act in good faith in the operation of the Operational Guidelines and to comply with its terms.

7. **Library Network - IT Infrastructure and Hardware**

- 7.1 For the purposes of operating, managing and facilitating the Network, each of the Member Councils shall have installed, upon payment of the Network Costs and Administration Costs, a network system together with all software developed for the Network to enable that Council to connect to and participate in <Library Network Name>.
- 7.2 Each of the Member Councils with the written approval of the Library Network may enhance or install any additional software to any hardware (referred to in Clause 7.1) operated by the Council at the Councils own cost and expense provided that the Council indemnifies the other Member Councils for all actions, costs, claims, damages or charges in respect of any loss or damage resulting from the enhancement installation or operation of any additional software, programme or enhancement. However, if unauthorized installations compromise the Network's integrity then that Council will be responsible in respect of all actions, costs or claims.
- 7.3 Each of the Member Councils shall be responsible for the licensing, maintenance and provision of all hardware, including but not limited to computer terminals, printers and any other equipment required to install and operate the network system and software for the Network. This provision may

be varied where the Member Councils choose to jointly undertake responsibility for all or portion of these requirements.

8. **Variation**

The Member Councils agree that the terms and conditions of this Memorandum may be varied upon written agreement of the proposed variation by **all** the Member Councils.

9. **Withdrawal**

9.1 If a Member Council of **<Library Network Name>** wishes to no longer participate, that Council may upon giving twelve (12) months written notice (the "Notice Period") to the other Member Councils withdraw from this Memorandum and the Network in which event that Council, as at and from the expiration of the Notice Period, shall no longer be a part of this Memorandum or the Network.

9.2 Notwithstanding withdrawing from the Network that Council shall still be liable for its contribution to all costs as per the Cost Schedule for the duration of this Memorandum of Understanding.

10. **Additional Members**

10.1 If another council or library service wish to join the Network, subject to the unanimous agreement of the Member Councils, that council or library service may join in this Memorandum and the Network, provided that the council or library service agrees;

10.1.1 to be bound by the terms and conditions of this Memorandum;

10.1.2 to contribute a share of the initial Network Costs and Administration Costs, with the contribution and use thereof to be determined by the Member Councils.

11. **No Partnership**

This Memorandum does not create or evidence a partnership between the Member Councils.

12. **Liability**

12.1 The **<Council Name>** Council shall indemnify and keep indemnified the other Member Councils against all actions, costs, claims, damages, charges in respect of injury, loss or damage resulting from any negligent act or omission of The **<Council Name>** Council;

12.2 The **<Council Name>** Council shall indemnify and keep indemnified the other Member Councils against all actions, costs, claims, damages, charges in respect of injury, loss or damage resulting from any negligent act or omission of the **<Council Name>** Council; and

- 12.3 The <Council Name> Council shall indemnify and keep indemnified the other Member Councils against all actions, costs, claims, damages, charges in respect of injury, loss or damage resulting from any negligent act or omission of the <Council Name> Council.

13. Membership of LGAMLS

The Member Councils warrant that they are members of the Local Government Association Mutual Liability Scheme (“the Scheme”) and are bound by the rules of the Scheme pursuant to Schedule 1 (Part 1)(2)(Local Government Indemnity Schemes) of the Act and in the event that any of the Member Councils cease to be members of the Scheme they will forthwith, pursuant to Section 142 of the Act, effect public liability insurance to a minimum level of cover of \$50,000,000.00.

14. Acknowledgement

The Member Councils acknowledge and agree that each of the Member Councils may in its own right engage the other Member Council staff for their services, however any agreed costs incurred by the Council in doing so shall be borne solely by the respective Council.

15. Winding Up

- 15.1 Subject to the Member Councils extending or otherwise entering into a new agreement, at the expiration of this Memorandum, each of the participating Member Councils at that time shall be provided with the following:

- 15.1.1 a readable copy of all records (hard copy or otherwise), in an appropriate format, associated with the Network;
- 15.1.2 to the extent permitted by law, a copy of all software and computer programmes associated with the Network; and
- 15.1.3 a share of the proceeds in accordance with the percentages specified in the Cost Schedule upon the realisation of any of the assets forming part of the Network (as opposed to those owned by the individual Councils) after the payment of all liabilities (outstanding or contingent) if any.

- 15.2 If upon winding up the liabilities (outstanding or contingent) exceed the assets forming part of the Network (as opposed to those owned by the individual Councils) each Member Council shall contribute a share towards the payment of the liabilities in accordance with the formula specified in the Cost Schedule.

16. Disputes Between Member Councils

- 16.1 The Member Councils agree to work together in good faith to resolve any matter requiring their direction or resolution.
- 16.2 Where the Member Councils are unable to resolve a matter within twenty one (21) days of the matter being presented to them, the matter will be referred to the Executive Director of the Local Government Association of South Australia (or his/ her nominee) for arbitration.

- 16.3 Notwithstanding Clause 16.2 the Member Councils agree to be bound by the decision of the appointed arbitrator (except in relation to any decision relating to the acquisition or disposal of any real property) and will endeavour to work together in good faith in the implementation of that decision.
- 16.4 The costs (if an) of arbitration shall be borne equally by the Member Councils involved in the arbitration.

EXECUTED as a Memorandum of Understanding

THE COMMON SEAL of **THE**)
 <Council Name> **COUNCIL** was)
 hereunto affixed in accordance with its)
 Constitution and by the authority of its)
 directors:

.....
 Mayor

.....
 Chief Executive Officer

THE COMMON SEAL of the)
 <Council Name> **COUNCIL** was)
 hereunto affixed in accordance with its)
 Constitution and by the authority of its)
 directors:

.....
 Mayor

.....
 Chief Executive Officer

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.....
 Mayor

.....
 Chief Executive Officer

COST SCHEDULE

	The <Council Name> Council	<Council Name> Council	<Council Name> Council
Network Costs	?%	?%	?%
Administration Costs	?%	?%	?%

Formula for Network Costs is the total number of computer workstations at each of the Member Council libraries.

Formula for Administration Costs is the percentage as determined by the Member Councils.

Review of Formula calculations

After the 31 December of the current calendar year the number of workstations for the allocation of the Network Costs percentage and percentage used for the allocation of the Administration Cost will be reviewed to apply for the forthcoming budgetary period.