

Palaret Law
Barristers and Solicitors
PO Box 10881, Tel 64 4 499 9462
Wellington

**TRANSFER OF SOUND ARCHIVE MATERIAL
AND RELATED ASSETS, AND ON-GOING PROVISION
OF SERVICES**

New Zealand Film Archive

AND

Sound Archives Nga Taonga Koreoro Limited

AND

Radio New Zealand Limited

BETWEEN

AGREEMENT

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

BETWEEN

RADIO NEW ZEALAND LIMITED a Crown entity established by the Radio New Zealand Act 1995 ("RNZ")

AND

SOUND ARCHIVES NGA TAONGA KORERO LIMITED an incorporated company being a wholly owned subsidiary of RNZ ("SANTK")

AND

NEW ZEALAND FILM ARCHIVE a charitable trust registered under the Charitable Trusts Act ("NZFA")

PART A – BACKGROUND

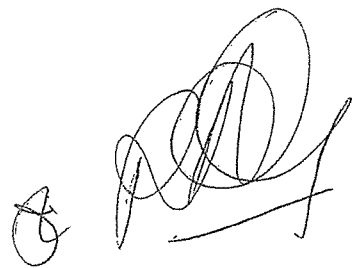
WHEREAS:

- A The RNZ charter under the Radio New Zealand Act 1995 includes the statutory function of RNZ to provide archiving of programmes that are likely to be of historical interest in New Zealand.
- B RNZ and SANTK presently hold the Sound Archive for the purpose of fulfilling this statutory charter function of RNZ.
- C RNZ and SANTK have determined that they may continue to meet the statutory charter function of RNZ by depositing the Deposited Sound Material and the RNZ Sound Material with NZFA on the terms and conditions of the Deposit and Access Agreement attached as Schedule 1 to this Agreement.
- D The parties intend that, to facilitate the transaction, RNZ will allow NZFA to use the Assets operate and maintain the Sound Archive, and NZFA will assume various responsibilities of RNZ in relation to employees engaged in the archive functions of RNZ, accommodation occupied by RNZ for the purpose of the Sound Archive, and contracts with third parties.
- E NZFA will meet the costs of managing the Sound Archive, including paying for the Services to be provided by RNZ in support of NZFA.
- F The deposit of the Deposited Sound Material and the RNZ Sound Material with NZFA and the other elements of the transaction between the parties will be undertaken in accordance with the terms and conditions of this Agreement.

NOW THEREFORE RNZ, SANTK AND NZFA AGREE AS FOLLOWS:

PART B - DEFINITIONS

- Agreement** means this agreement
- Assets** means the physical assets identified in the asset register attached as Schedule 3 and that have been used by SANTK before the Transfer Date to operate and maintain the Sound Archive
- Cashel Street Lease** means the deed of lease between Wihada Properties Limited and RNZ dated 21 June 2011 for Tenancy 6 and Part Tenancy 1, Ground Floor, 324 Cashel Street, Christchurch being approximately 324 square metres
- Deposit and Access Agreement** means the agreement dated [] August 2012 executed by RNZ, SANTK and NZFA, a copy of which is attached as Schedule 1 and which sets out the terms and conditions for existing and future Sound Archive Material to be deposited by RNZ and SANTK with NZFA, including (without limitation) the obligations of NZFA in relation to the Sound Archive, RNZ's access rights, and RNZ's commitment to pay the agreed access charge to NZFA
- Deposited Sound Material** means sound recordings, documentation and ephemera held by SANTK or RNZ in the sound archive operated by RNZ and SANTK, and deposited with NZFA at the Transfer Date. This includes:
(a) material owned by and is the copyright of RNZ;

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(b) material owned by and is not the copyright of RNZ; and

(c) material not owned by and is not the copyright of RNZ

Extraordinary Event

means an event that is beyond the reasonable control of the party immediately affected by the event which makes it impossible or illegal to perform, or prevents compliance with or performance of, a party's obligations under this Agreement. An Extraordinary Event does not include a lack of funds or any risk or event that the party claiming could have prevented or overcome by taking reasonable care. Examples include:

(a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;

(b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;

(c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war;

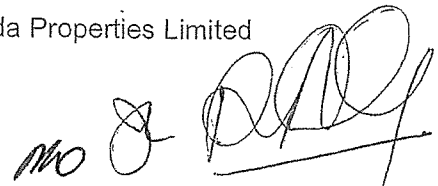
(d) contamination by radio-activity from nuclear substances or germ warfare or any other such hazardous properties.

GST

means the goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985

Head Lessor

means the Landlord under the Cashel Street Lease, currently Wihada Properties Limited



RNZ Sound Material means sound recordings, documentation and ephemera which is deposited with NZFA or recorded by NZFA after the Transfer Date and which RNZ either owns or is the copyright of RNZ, and includes any copies of Deposited Sound Material or RNZ Sound Material made by NZFA under the Deposit and Access Agreement

Services means the tasks, services, supports and entitlements described in Schedule 2, and which RNZ agrees to perform, deliver or make available to NZFA under this Agreement

Sound Archive means the full collection of Sound Archive Material

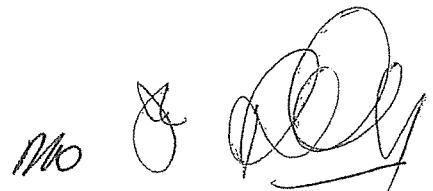
Sound Archive Material means all or any of the Deposited Sound Material, RNZ Sound Material and Third Party Sound Material

Tax Invoice means a tax invoice issued by one party to another party in respect to an amount due under this Agreement as required for the purposes (among other things) of the Goods and Services Tax Act 1985

Third Party Contract means the Software Licence Agreement between Radio New Zealand and Venon Systems Limited dated 22 January 2012 and any contracts (or part thereof) agreed between the parties as being Third Party Contracts in accordance with clause 6.2

Third Party Sound Material means any sound recordings, documentation and ephemera acquired by NZFA after the Transfer Date which is not owned by and not the copyright of RNZ

Transfer Date means 1 October 2012



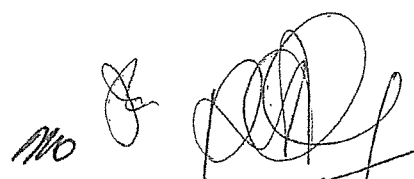
Working Day

means any day other than a Saturday, Sunday or a public holiday (as defined in the Holidays Act 2003) in Wellington. A Working Day starts at 8.30am and ends at 5pm

PART C - TRANSFER

1 Deposit and Access Agreement

- 1.1 To the fullest extent possible, RNZ and SANTK will deposit the Deposited Sound Material with NZFA on the Transfer Date on the terms and conditions specified in the Deposit and Access Agreement.
- 1.2 Despite the Deposit and Access Agreement being part of this Agreement, it may be enforced by any party separately from this Agreement and is not enforceable under this Agreement.
- 1.3 The deposit of the Deposited Sound Material under this Agreement and the Deposit and Access Agreement is subject to the conditions that:
 - 1.3.1. NZFA amends its trust deed to permit NZFA to hold, maintain and operate the Sound Archive and perform its obligations under the Deposit and Access Agreement; and
 - 1.3.2. RNZ and SANTK obtain the agreement in writing of the Chief Archivist under the Public Records Act 2005 to defer under section 22 of that Act, for a specified period to be agreed between RNZ and the Chief Archivist, the transfer of the Deposited Sound Material that has been in existence for 25 years or more and is otherwise required by that Act to be transferred to the control of the Chief Archivist and that the terms and conditions of any such agreement are reasonably acceptable to RNZ and NZFA.
- 1.4 NZFA will use its best endeavours to ensure the condition in clause 1.3.1 is met by 31 August 2012 (and to register the amendment with the Registrar of Incorporated Societies by 14 September 2012).



1.5 RNZ and SANTK will use their best endeavours to ensure the condition in clause 1.3.2 is met by 28 September 2012 (subject to any terms and conditions of the Chief Archivist being reasonably acceptable to RNZ and NZFA).

1.6 If either of the conditions is not met by the due date under clause 1.4 or 1.5, the chief executives of RNZ and NZFA will meet to agree the most expeditious way to proceed with the transaction under this Agreement. If they agree there is no reasonably expeditious way to proceed with the transaction, the chief executives may agree at any time before the Transfer Date that a condition for this Agreement cannot be met. In that case, this Agreement and the Deposit and Access Agreement will have no effect and the parties will not have any rights or remedies against each other.

2 Transfer of Assets

2.1 RNZ will allow NZFA to use the Assets to operate and maintain the Sound Archive under the Deposit and Access Agreement.

2.2 NZFA will pay RNZ a fee for the use of the Assets consisting of the following amounts:

2.2.1. the following annual depreciation charges for the Assets:

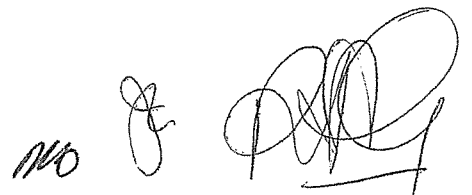
(a) 2012/2013 - \$ (first quarter);

(b) 2013/2014 - \$


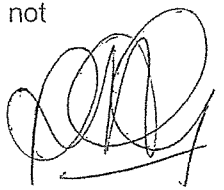
(c) 2014/2015 - \$

(d) 2015/2016 - \$

2.2.2. an amount for the annual cost of capital for the Assets, being the equivalent to the average of the 90-day Treasury Bill Rate over the 30 days prior to the relevant due date plus 2% on the average of the opening and closing net book value of the Assets for each preceding financial year.



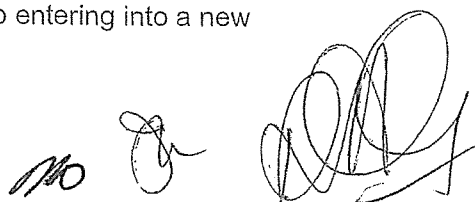
- 2.3 The fee payable by NZFA will be due quarterly from the Transfer Date, with the first payment due on 31 December 2012 and each quarter thereafter to 30 June 2016.
- 2.4 RNZ must provide valid Tax Invoices to NZFA for each payment due under clause 2.3.
- 2.5 NZFA must pay each valid Tax Invoice issued by RNZ under clause 2.4 by the 20th day of the month after the Tax Invoice is dated.
- 2.6 RNZ will repair and restore to the same condition as existed immediately prior to the Canterbury earthquakes any Assets which:
- 2.6.1. are currently held in storage;
 - 2.6.2. have not been inspected by NZFA before the date of this Agreement;
 - 2.6.3. have a positive book value in RNZ's Asset register as at 30 September 2012; and
 - 2.6.4. have been damaged as a result of the Canterbury earthquakes.
- 2.7 RNZ makes no representation or guarantees as to value or otherwise in relation to any Assets to be transferred to NZFA that have zero net book value in RNZ's asset register as at 30 September 2012, and gives no undertaking as to their repair or restoration as a result of damage that they may have suffered in the Christchurch earthquakes except that it:
- 2.7.1. recognises that their reasonable repair may be provided for under the terms of the service agreement to be agreed under clause 3 of this Agreement; and
 - 2.7.2. will apply as necessary the proceeds of any insurance claim it makes for such Assets that have been damaged as a result of the Canterbury earthquakes to restore those Assets to their condition immediately before the earthquakes.
- 2.8 RNZ will transfer full legal ownership and title to the Assets to NZFA on 30 June 2016 on receipt of \$ _____ being the estimate of their residual book value as at the date of this Agreement (and which amount does not

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include the increased value of any goods restored under clause 2.6 or 2.7).

3 Services

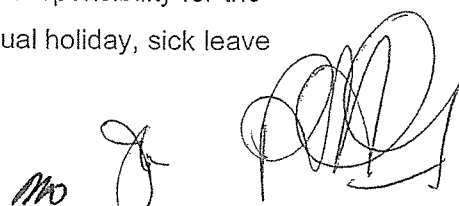
- 3.1 RNZ will provide, and NZFA will accept, the Services up to 30 June 2015 for the annual fee of \$ 105,000 as specified in Schedule 2.
- 3.2 RNZ will provide the Services to NZFA in a timely, responsive, open, and reliable manner that supports NZFA in fulfilling its commitments under the Deposit and Access Agreement.
- 3.3 NZFA will pay for the Services in quarterly instalments (in arrears) from 31 December 2012 to 30 June 2015 (11 quarterly payments).
- 3.4 RNZ must provide valid Tax Invoices to NZFA for each payment due under clause 3.3.
- 3.5 NZFA must pay each valid Tax Invoice issued by RNZ under clause 3.4 by the 20th day of the month after the Tax Invoice is dated.
- 3.6 RNZ and NZFA will use reasonable efforts to enter into a service agreement by 1 May 2013 that specifies the range and scope of the Services and the service level requirements to be provided by RNZ up to 30 June 2016 or required by NZFA from time to time, within the agreed \$105,000 annual fee. If no such agreement is entered into, the Services will continue to be provided under this Agreement.
- 3.7 For the avoidance of doubt:
- 3.7.1. RNZ is not required by this Agreement to provide the Services at any place other than the premises referred to in clause 5 of this Agreement; and
- 3.7.2. the service agreement to be agreed under clause 3.6 will specify whether RNZ is required to provide the Services at any other location and, if so, the implications for the fee to be paid by NZFA and the range of services to be provided by RNZ.
- 3.8 In any event, by 1 May 2015, the parties will review the provision of the Services beyond 30 June 2015 with a view to entering into a new



agreement for the provision of all or any of the Services that continue to be required after that date.

4 Employees

- 4.1 The parties will cooperate with a view to effecting the transfer to NZFA of the eight employees currently employed by RNZ to provide services to SANTK (the "Employees"), in accordance with the parties' respective legal obligations.
- 4.2 NZFA will cooperate with RNZ in relation to RNZ's legal obligations to the staff transferring to NZFA, including RNZ's consultation obligations and RNZ's obligation to negotiate with NZFA for the transfer of the current Employees to NZFA on the same terms and conditions, including (for seven of the Employees) the collective nature of their employment agreement.
- 4.3 NZFA will make a written offer to each of the Employees offering to employ each of the Employees:
- 4.3.1. on or before 3 September 2012;
 - 4.3.2. effective from 1 October 2012, but conditional on the transfer of the Sound Archive under this Agreement and the Deposit and Access Agreement;
 - 4.3.3. on terms and conditions that are the same as their existing terms and conditions of employment, including (for seven of the Employees) the collective nature of their employment agreement;
 - 4.3.4. recognising the service of the Employees with RNZ as service with NZFA for all purposes; and
 - 4.3.5. if required by RNZ, on conditions that each Employee will, by accepting NZFA's offer, waive any entitlements the Employee might have arising from the termination their employment by RNZ.
- 4.4 On and from the Transfer Date, NZFA will accept responsibility for the accrued entitlements (including any accrued annual holiday, sick leave



and long service leave entitlements) of Employees who accept NZFA's offer of employment.

- 4.5 On the Transfer Date or as soon as practicable thereafter, RNZ will pay NZFA the value of the Employees' accrued annual holiday and long service leave entitlements that are assumed in accordance with clause 4.4, calculated as at the Transfer Date.

5 Accommodation

Cashel Street

- 5.1 RNZ agrees to sublease and NZFA agrees to take on a sublease of 215 square metres of the premises currently leased by RNZ under the Cashel Street Lease with a total rent and operating costs for the sublease of \$39,426 per annum. The terms of the sublease to NZFA will be the same as the Cashel Street Lease, other than the signage rights and right of assignment pursuant to clause 34.4.
- 5.2 RNZ will use its best endeavours to obtain the consent (where necessary) of the Head Lessor to the sublease to NZFA by the Transfer Date.
- 5.3 The parties acknowledge that the Cashel Street Lease is due to expire on 8 May 2013. RNZ will enter into good faith negotiations with the Head Lessor for an extension to the Cashel Street Lease. In the event that a successful extension is negotiated, RNZ agrees to sublease and NZFA agrees to take on a sublease of 215 square metres of the premises for any extension negotiated with the Head Lessor, up to a period of two years and on the same terms as the lease negotiated by RNZ with the Head Lessor for the extension (with total rent and operating costs pro-rated to take into account the proportion of the premises occupied by NZFA).

Christchurch Lock up

- 5.4 RNZ agrees to assign to NZFA, and NZFA accepts the assignment of the Christchurch Lock-up storage space being 74 sq metres at \$5,300 per annum.

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Hobson Street, Auckland

- 5.5 RNZ agrees to license and NZFA agrees to take on a licence of two serviced offices at 171 Hobson Street, Auckland substantially on the terms and conditions attached as Schedule 4 to this Agreement.

Titahi Bay and Henderson

- 5.6 RNZ will provide to NZFA the same non-exclusive access to the transmission site buildings at Titahi Bay and Henderson as currently enjoyed by SANTK. RNZ and NZFA agree to consult on the possible continued use of these sites by 1 May 2013.

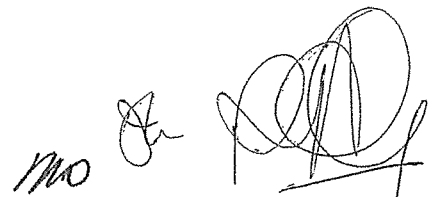
General Terms of Transfer

- 5.7 The terms of assignment of any lease will include an undertaking by NZFA to be liable for any amounts incurred by RNZ or SANTK in respect of all claims, proceedings, rent, costs, and expenses arising out of any default by NZFA in the performance of the provisions of the relevant lease.
- 5.8 If for any reason RNZ is unable to arrange a sublease or assignment of any premises to used be by the Sound Archive under this clause, RNZ will do all things reasonably within its control for NZFA to take possession of such premises on the Transfer Date, provided always that RNZ is not obliged to provide such possession where to do so would put RNZ in breach of any of its contractual obligations in relation to the premises.

New Christchurch Premises

- 5.9 In principle, NZFA will lease premises for the Sound Archives from RNZ in RNZ's proposed new building in Christchurch on the following basis:

- 5.9.1. The rent for the premises in RNZ's proposed new building will be a current market rental to be determined by an independent expert agreed by the parties, less a discount to be agreed by RNZ and NZFA in a separate lease agreement after taking into account RNZ's anticipated insurance payout for the fit-out of sound archive premises in the new building and any other matters as agreed;



5.9.2. If RNZ and NZFA cannot agree on an independent expert to determine the current market rent, the President of the Wellington Branch of the New Zealand Law Society will nominate an independent expert and that decision will be binding on the parties;

5.9.3. RNZ and NZFA will negotiate in good faith and use reasonable efforts to agree on the terms and conditions of a lease in RNZ's proposed new building;

5.9.4. The rent, discount, and terms and conditions agreed or determined under this clause will bind RNZ and NZFA.

5.10. Despite clause 5.9, there is no legal obligation on NZFA to take premises within RNZ's proposed new building in Christchurch and no legal obligation on RNZ to lease those premises to NZFA, unless and until NZFA and RNZ agree to do so in a future lease agreement. This Agreement is not conditional on RNZ and NZFA concluding a lease agreement for those premises in RNZ's proposed new building in Christchurch.

6 Third Party Contracts

6.1. NZFA will assume the future responsibilities of RNZ and SANTK under the Third Party Contracts listed in Schedule 3 from the Transfer Date.

6.2. No later than 14 September 2012, the parties will meet with a view to agreeing on the contracts (or part thereof) between RNZ and/or SANTK and third parties that will be Third Party Contracts for the purposes of this Agreement.

6.3. RNZ and SANTK will:

6.3.1. use their best endeavours to novate their rights and interests under the Third Party Contracts and obtain the consent (where necessary) of the other parties to the contracts to the novation of those contracts to NZFA by the Transfer Date;

6.3.2. notify NZFA with details of any Third Party Contracts not novated on the Transfer Date to NZFA; and

6.3.3. hold the benefit of any Third Party Contracts not novated on the Transfer Date in trust for NZFA.

6.4 NZFA will:

6.4.1. use reasonable endeavours to assist RNZ and SANTK to effect the novations and assignments (as applicable) of the Third Party Contracts in accordance with clause 6.3 and obtain the third party consents where necessary, including after the Transfer Date, and including by providing appropriate forms of novation and assignment and any financial and operational information reasonably required by any counterparty from whom a third party consent is required;

6.4.2. accept any terms imposed by any third party, that the third party is contractually entitled to impose or require as a condition of granting their consent, provided the acceptance of such terms does not result in the terms of any Third Party Contract being materially more onerous for NZFA than those applying to RNZ or SANTK at the date of this Agreement;

6.4.3. properly perform the obligations of RNZ or SANTK under those Third Party Contracts that are the subject of clause 6.3.3 on RNZ's or SANTK's behalf; and

6.4.4. assume, and fully and effectively perform, all obligations arising under the Third Party Contracts on and from the Transfer Date including liability for all loss arising (directly or indirectly) from, and any costs, damages, losses, charges or expenses incurred concerning, any failure by NZFA to perform all such obligations following the Transfer Date, and NZFA will fully indemnify RNZ and keep RNZ fully indemnified against any claim made against it in respect of any such matter or thing.

6.5 NZFA does not accept any responsibility for the obligations of RNZ and SANTK under the Third Party Contracts in relation to any matter or thing that occurred before the Transfer Date, and RNZ will fully indemnify NZFA and keep NZFA indemnified against any claim made against it in respect of any such matter or thing.

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6.6 NZFA will not have any rights (including any right to cancel or terminate this Agreement or seek damages) against RNZ or SANTK:

6.6.1. if any required consent of a counterparty to the novation of any Third Party Contract is not obtained, whether before or after the Transfer Date;

6.6.2. to the extent that any counterparty to a Third Party Contract terminates, varies or repudiates any such agreement as a result of the entry into or completion of this Agreement; or

6.6.3. if RNZ or SANTK are not lawfully able to hold on trust for the NZFA any Third Party Contract,

provided that this clause 6.6 does not release RNZ and SANTK from their obligation to use best endeavours as provided in clause 6.3.1.

PART D - GENERAL

7 Costs

7.1 Each party will be responsible for meeting its own costs in relation to the preparation of this Agreement.

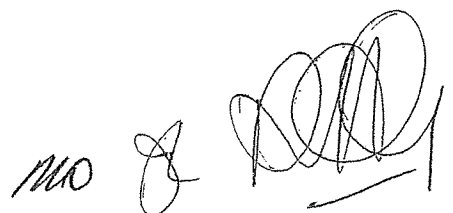
8 Warranties

8.1 Each party warrants and represents to the others that:

8.1.1. it has full power, authority and capacity to enter into and execute this Agreement;

8.1.2. it will carry out its obligations to the other parties under this Agreement and the Deposit and Access Agreement with due skill and care, using appropriately qualified, experienced and supervised persons;

8.1.3. all information provided, or to be provided, under or in connection with this Agreement is accurate, complete and true, to the best of its knowledge; and



- 8.1.4. in performing its obligations under this Agreement and the Deposit and Access Agreement it will comply with all relevant laws, standards and codes that apply in New Zealand.

9 Covenants

9.1 The parties agree to:

- 9.1.1. act in good faith and demonstrate honesty, integrity, openness, and accountability in their dealings with each other;
- 9.1.2. discuss matters affecting this Agreement, the Deposit and Access Agreement, or the delivery of the Services, whenever necessary; and
- 9.1.3. notify each other immediately of any actual or anticipated issues that could significantly impact on the Sound Archive or receive media attention.

9.2 NZFA does not accept any responsibility for any liabilities of RNZ or SANTK in relation to the Sound Archive that exist before the date of this Agreement, apart from the obligations referred to in this Agreement and the Deposit and Access Agreement.

9.3 In the event of an amendment to RNZ's statutory charter functions under the Radio New Zealand Act in relation to providing archiving of programmes, the parties will meet in good faith to agree on any necessary amendments to this Agreement and the Deposit and Access Agreement.

10 No partnership or joint venture

10.1 Nothing in this Agreement constitutes a legal relationship between the parties of partnership or joint venture. No party has the authority to bind or represent another party in relation to a partnership or joint venture in any way or for any purpose in relation to this Agreement.

10.2 NZFA is responsible for its own liabilities, including its employees' salaries, wages, holiday or redundancy entitlements and any GST, taxes, ACC premiums or other levies attributable to NZFA's business or the engagement of its employees.

11 Termination

11.1 If a party breaches any of its obligations under this Agreement, the affected party may give written notice to the other parties specifying the breach and requiring it to be remedied within:

11.1.1. 20 Working Days of the notice being received by the party in breach of its obligations; or

11.1.2. such longer period of time as is required to give the party a reasonable opportunity to remedy the breach.

11.2 A party affected by a breach by another party may cancel this Agreement if:

11.2.1. the party in breach of its obligations fails to remedy a breach notified by another party in accordance with clause 11.1;

11.2.2. the party in breach of its obligations repeatedly commits a breach of the same obligation under this Agreement, after the service and expiry of notice given in accordance with clause 11.1; or

11.2.3. a party has committed a breach of an essential term of its obligations under this Agreement that is incapable of being remedied.

11.3 The party in breach of its obligations may provide the other parties with a written explanation for any breach of this Agreement within the 20 Working Day period under clause 11.1. The parties affected by the breach must consider any response before making a final determination under this clause.

11.4 Any dispute between the parties regarding the application or implementation of the provisions of this clause is to be resolved in accordance with clause 12.

12 Disputes and Differences

12.1 If any dispute or difference arises between the parties in respect of any matter concerning this Agreement the parties must in the first instance

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and in good faith use their best endeavours to resolve the dispute or difference themselves.

12.2 In the event of the parties not resolving any dispute or difference themselves, the parties may agree on a formal mediation or some other form of alternative dispute resolution.

12.3 If a dispute is referred to mediation, the mediation will be conducted:

12.3.1. by a single mediator agreed by the parties, or if they cannot agree, appointed by the Chair of LEADR New Zealand Inc (Lawyers Engaged in Alternative Dispute Resolution),

12.3.2. on the terms of the LEADR New Zealand Inc. standard mediation agreement; and

12.3.3. at a fee to be agreed by the parties, or if they cannot agree, at a fee determined by the Chair of LEADR New Zealand Inc.

12.4 Each party will pay its own costs of mediation or alternative dispute resolution under clause 12.2.

12.5 If there is a dispute, each party will continue to perform its obligations under this Agreement as far as practical given the nature of the dispute.

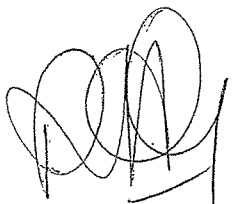
12.6 No party will start any court action in relation to a dispute until they have complied with the process described in clause 12.2, unless court action is necessary to preserve a party's rights.

13 No fault termination

13.1 If the Deposit and Access Agreement is terminated by the agreement of the parties, then this Agreement will also be terminated at the same time.

14 Extraordinary Events

14.1 The parties will not be liable to each other for any failure to perform their obligations under this Agreement to the extent that the failure is due to an Extraordinary Event.

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14.2 A party which wishes to claim suspension of its obligations due to an Extraordinary Event must notify the other parties as soon as reasonably possible. The notice must state:

14.2.1. the nature of the circumstances giving rise to the Extraordinary Event;

14.2.2. the extent of that party's inability to perform under this Agreement;

14.2.3. the likely duration of that non-performance; and

14.2.4. what steps are being taken to remedy, or reduce the impact of the Extraordinary Event on the performance of its obligations.

14.3 If a party is unable to perform any obligations under this Agreement for 20 Working Days or more due to an Extraordinary Event, the other party may terminate this Agreement immediately by giving notice.

15 Notices

15.1 For the purpose of this Agreement, all correspondence must be forwarded through the respective contact parties

for RNZ –

Level 2
Radio New Zealand House
155 The Terrace
PO Box 123
WELLINGTON
Attention: Peter Cavanagh
Chief Executive

for SANTK –

C/- Radio New Zealand Limited Level 2
Radio New Zealand House
155 The Terrace
PO Box 123
WELLINGTON
Attention: Peter Cavanagh
Chief Executive

NO & [Signature]

for NZFA –

84 Taranki Street

PO Box 11449

WELLINGTON

Attention: Frank Stark

Chief Executive

15.2 A notice will be considered to be received:

15.2.1. if it is delivered by hand, on the date it is delivered;

15.2.2. if it is sent by post within New Zealand, on the 3rd Working Day after the date it was sent;

15.2.3. if it is sent by courier, on the date it is delivered;

15.2.4. if it is sent by fax, on the sender receiving a fax machine report that it has been successfully sent; or

15.2.5. if it is sent by e-mail, at the time the e-mail enters the recipient's information system.

15.3 A notice received after 5pm on a Working Day, or on a day that is not a Working Day, will be considered to be received on the next Working Day.

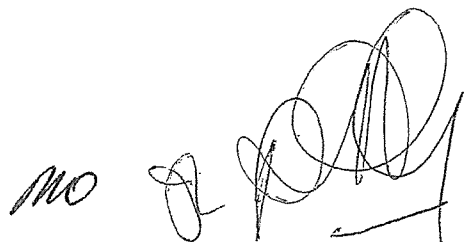
16 Miscellaneous

16.1 Assignment

NZFA will not assign its interest under this Agreement to any other person or body.

16.2 Waiver

16.2.1. A waiver by any party of its rights arising from a breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms and conditions of this Agreement.

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16.2.2. No failure or delay on the part of any party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

16.3 *Entire Agreement*

The parties acknowledge that this Agreement (including the Schedules) sets out the entire agreement and understanding of the parties in relation to the Sound Archive and supersedes all prior oral or written agreements, understandings or arrangements relating to the Sound Archive and the other subject matter of this Agreement.

16.4 *Variations*

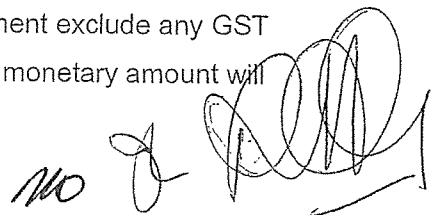
This Agreement cannot be varied in any manner except by way of agreement in writing signed by the parties.

16.5 *Severability*

If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of this Agreement will be binding on the parties.

17 Construction of this Agreement

- 17.1 References to clauses and schedules are to clauses of and schedules to this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.
- 17.2 The headings in this Agreement are for convenience only and have no legal effect.
- 17.3 The singular includes the plural and vice versa.
- 17.4 References to parties refer to parties to this Agreement.
- 17.5 Any monetary amounts referred to in this Agreement exclude any GST which may be payable. Any GST in respect of a monetary amount will



be payable by the party liable to pay that monetary amount to the other party.

17.6 This Agreement may be signed in any number of counterparts (including facsimile copies) and provided each party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the parties.

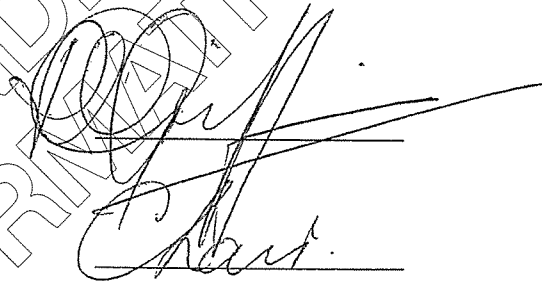
17.7 This Agreement will be governed by and construed in accordance with the law for the time being in force in New Zealand.

This Agreement was signed on the 31 day of August 2012 by:

RADIO NEW ZEALAND LIMITED)

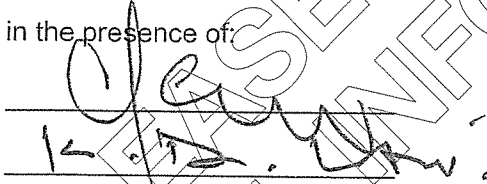
by)

and)



Chris

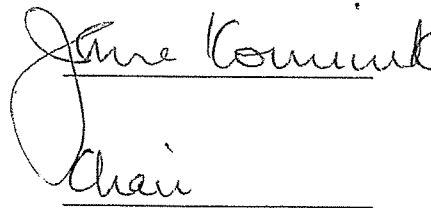
in the presence of:



NEW ZEALAND FILM ARCHIVE)

by)

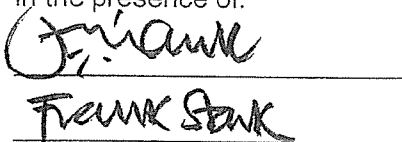
and)



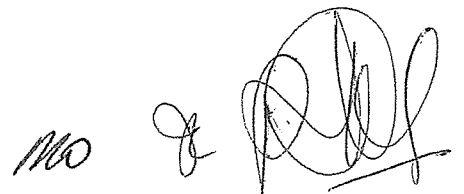
Jane Cornink

Chair

in the presence of:



FRANK BENK



MO & [Signature]

SOUND ARCHIVES NGA
TAONGA KORORO LIMITED

by

and

)
)
)
)
)

Mauera

DIRECTOR

in the presence of:

[Signature]
K. D. Law

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Schedule 1 – Deposit and Access Agreement

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Schedule 1

DEPOSIT AND ACCESS AGREEMENT

Date:

PARTIES

1. **The New Zealand Film Archive Nga Kaitiaki O Nga Taonga Whitiāhua** a charitable trust registered under the Charitable Trust Act 1957 (NZFA)
2. **Radio New Zealand Limited** a crown entity established by the Radio New Zealand Act 1995 (RNZ)
3. **The Sound Archives Nga Taonga Korero Limited** a wholly owned subsidiary of RNZ (SANTK)

BACKGROUND

- A. The RNZ charter under the Radio New Zealand Act 1995 includes the statutory function of RNZ to provide archiving of programmes that are likely to be of historical interest in New Zealand.
- B. RNZ and SANTK presently hold the Sound Archive for the purpose of fulfilling this statutory charter function of RNZ. The Parties have agreed that RNZ and SANTK will deposit the Deposited Sound Material and the RNZ Sound Material with NZFA.
- C. In order to comply with RNZ's obligations under the Radio New Zealand Act and the Public Records Act 2005, and in order for exemptions under the Copyright Act 1994 for archiving and providing public access to apply, the arrangement between RNZ and NZFA will involve RNZ subcontracting day-to-day maintenance and operation of the Sound Archive to NZFA.
- D. RNZ and SANTK will retain copyright and legal title to all Deposited Sound Material and RNZ Sound Material in which they or either of them hold legal title and copyright immediately prior to deposit with NZFA.
- E. The deposit of the Deposited Sound Material and the RNZ Sound Material with NZFA and the other elements of the transaction between the parties will be undertaken in accordance with the terms and conditions of this agreement.

TERMS AND CONDITIONS

1. Defined terms

- 1 Terms used in this agreement have the same meaning as in the Transfer Agreement executed by the parties on [] August 2012 (**Transfer Agreement**) unless the context requires otherwise.

2. Initial deposit

- 1 Subject to clause 2.2, RNZ and SANTK will deposit the Deposited Sound Material in the Sound Archives held by them on 1 October 2012 with NZFA.
- 2 To the fullest extent possible, any Deposited Sound Material held by RNZ and SANTK subject to agreements or conditions with third party donors will be deposited with NZFA, but that Deposited Sound Material will remain subject to the terms and conditions of the agreements between RNZ and SANTK and third party donors, and NZFA will comply with those agreements.
- 3 RNZ and SANTK will provide NZFA with reasonable access to all relevant information about the Deposited Sound Material being deposited, including metadata and all relevant information relating to rights of third parties.
- 4 RNZ and SANTK will retain legal title and copyright in all Sound Archive Material in which they held title and copyright immediately prior to the deposit of that material with NZFA.

3. Ongoing deposit

- 1 RNZ will deposit RNZ Sound Material with NZFA from time to time on the same terms and conditions as apply to the initial deposit in accordance with:
 - a. RNZ's function to provide archiving of programmes under the Radio New Zealand Act; and
 - b. the funding for receipt and storage of such material under NZFA's Funding Agreement with the Ministry for Culture and Heritage (MCH).
- 2 NZFA and RNZ will agree on the nature and volume of the RNZ Sound Material that RNZ will deposit in the Sound Archive.
- 3 Third parties apart from RNZ will also deposit Third Party Sound Material with NZFA. NZFA will make reasonable efforts to provide the level of access in respect of such Third Party Sound Material as RNZ has in relation to third party sound material at the date of this agreement.
- 4 If NZFA records communication works, as defined in the Copyright Act, into the Sound Archive in accordance with section 90 of the Copyright Act, it will do so as contractor for the maintenance of the Sound Archive for RNZ.

4. Approval of Chief Archivist

- 1 RNZ will obtain the agreement in writing of the Chief Archivist under the Public Records Act to defer under section 22 of that Act, for a specified period to be agreed between RNZ and the Chief

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Archivist, the transfer of the Deposited Sound Material that has been in existence for 25 years or more and that is otherwise required by section 21 of that Act, provided that the terms and conditions of any such agreement are reasonably acceptable to RNZ.

- 2 NZFA will comply with any requirements of RNZ, set out by RNZ in writing, for RNZ to meet its obligations under the Public Records Act.

5. **Storage, presentation and operation of sound archive**

- 1 NZFA will store, preserve and operate the Sound Archive in accordance with international best archiving practice for sound archiving and in accordance with (subject to any third party rights) any reasonable requirements of RNZ and SANTK.

6. **Copying of deposited material**

- 1 Prior to 1 May in each year following the date of this agreement NZFA and RNZ will meet to agree a policy and/or schedule for the copying of deposited material over the following 12 months. NZFA will use its best endeavours to adhere to any agreed schedule.
- 2 NZFA will copy Sound Archive Material for preservation purposes in accordance with the provisions of the Copyright Act 1994 and as provided for in its Funding Agreement with MCH and on behalf of RNZ and as contractor to RNZ for the maintenance of the Sound Archive. Preserved Sound Archive Material will be stored and maintained by NZFA on behalf of RNZ and as contractor to RNZ for the maintenance of the Sound Archive.
- 3 Legal title, copyright and other intellectual property rights in respect of copies of Deposited Sound Material and RNZ Sound Material will remain with RNZ or SANTK, subject to any third party rights of a third party in respect of that material.

7. **Cataloguing of sound archive material**

- 1 NZFA will record descriptive information about the Sound Archive Material on to a publicly accessible database.

8. **Significant Maori material**

- 1 RNZ acknowledges that NZFA is a bi-cultural organisation committed to ensuring appropriate use of Sound Archive Material with significant Maori content and will provide relevant information regarding such material to whanau, hapu and iwi as part of its development of kaitiakitanga and access procedures.

9. **Access to systems**

- 1 RNZ will allow NZFA access to RNZ's broadcast and programming systems to enable NZFA to obtain access to RNZ material for archiving and to related information as part of the Services in accordance with clause 3 of the Transfer Agreement, subject to any RNZ system security safeguards.

2 NZFA will allow RNZ access to its database to enable RNZ to obtain relevant information on Sound Archive Material.

10. Reporting

1 NZFA will supply RNZ with copies of its reporting on sound archiving activity to MCH under the Funding Agreement and will provide additional information about the Sound Archive Material where reasonably requested by RNZ.

2 RNZ may at its own cost audit NZFA for the purpose of ascertaining compliance with this agreement.

11. Funding

1 The obligations of NZFA under this agreement remain subject at all times to the provision of sufficient funding from MCH to NZFA for the provision of sound archiving services.

2 NZFA will take all reasonable steps to ensure its obligations under the Funding Agreement with MCH are consistent with its obligations under this agreement.

12. Access

1 NZFA agrees to provide RNZ access to Sound Archive Material on substantially the same terms as the access RNZ has to such material before the date of this agreement. For the avoidance of doubt, RNZ will only be entitled to access Third Party Sound Material that it has rights to access.

2 NZFA will ensure that its information and retrieval systems enable RNZ to gain access to the Sound Archive Material required for broadcast within the agreed timeframes, provided in respect of Third Party Sound Material that RNZ has rights to access that Third Party Material.

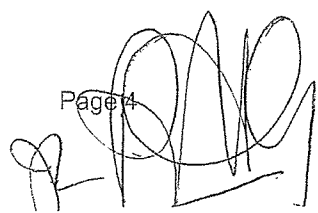
3 NZFA will accept requests from RNZ for access to Sound Archive Material via the on-line search engine, email or telephone, provided in respect of Third Party Sound Material that RNZ has rights to access that Third Party Material.

4 If the requested material is available in digital form, NZFA will make reasonable efforts to provide the requested material or a copy of it within 2 hours for urgent requests; five Working Days for normal news and current affairs requests; and ten Working Days for features and other requests.

5 If the requested material is not available in digital form, NZFA will make reasonable efforts to provide the requested material or a copy of it within five Working Days for urgent requests and twenty Working Days for non-urgent requests.

6 RNZ will act reasonably in requesting Sound Archive Material, and will expect a similar level of service to that which RNZ has from the Sound Archive before the date of this agreement.

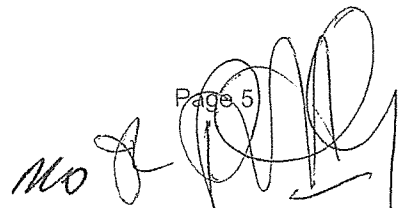
7 Material will be provided in either WAV format - 44.1KHz 16 bit (SADIE) or MPeg2 format - 48KHz - 128kbs (COSTAR) as requested.

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- 8 RNZ will pay an access charge to NZFA of \$48,500 (excluding GST) per annum, to be paid in four equal quarterly payments. By 1 May 2015, the parties will review the amount of the access charge beyond 30 June 2015, with a view to confirming or re-setting the access charge after that date.
- 9 NZFA will provide public access on behalf of RNZ to Sound Archive Material in accordance with section 57(1) of the Copyright Act 1994 (as may be amended from time to time) on terms and conditions agreed in writing with RNZ from time to time. NZFA will provide such public access as contractor to RNZ for the maintenance of the Sound Archive.
- 10 NZFA must not permit commercial use of the Deposited Sound Material and the RNZ Sound Material by parties other than RNZ except with the express permission of RNZ. Any charges imposed by NZFA for providing access to parties other than RNZ will be no more than those required to cover NZFA's reasonable costs in providing such access.
- 11 RNZ retains the right to negotiate its own royalty fees in respect of its material held by NZFA, and RNZ and NZFA will work together to agree on a mechanism to recover its royalty fees.
- 12 In the case of significant Maori material, NZFA will consult relevant whanau, hapu and iwi within its kaitiaki network before allowing parties other than RNZ access to Deposited Sound Material or RNZ Sound Material.

13. Termination for cause

- 1 If a party breaches any of its obligations under this agreement, the affected party may give written notice to the other parties specifying the breach and requiring it to be remedied within:
- 20 Working Days of the notice being received by the party in breach of its obligations; or
 - such longer period of time as is required to give the party a reasonable opportunity to remedy the breach.
- 2 A party affected by a breach by another party may cancel this agreement if:
- the party in breach of its obligations fails to remedy a breach notified by another party in accordance with clause 13.1;
 - the party in breach of its obligations repeatedly commits a breach of the same obligation under this agreement, after the service and expiry of notice given in accordance with clause 13.1; or
 - a party has committed a breach of an essential term of its obligations under this agreement that is incapable of being remedied.
- 3 The party in breach of its obligations may provide the other parties with a written explanation for any breach of this agreement within the 20 Working Day period under clause 13.1. The parties affected by the breach must consider any response before making a final determination under this clause.

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be 'MO' followed by a large, stylized flourish.

4 Any dispute between the parties regarding the application or implementation of the provisions of this clause is to be resolved in accordance with the Dispute Resolution clause in the Transfer Agreement.

14. No fault termination

1 This agreement may be terminated with 12 months notice by either RNZ or NZFA.

2 On termination of this agreement under this clause or clause 13, NZFA agrees to provide to RNZ:

- a. all Deposited Sound Material and RNZ Sound Material held by NZFA in the Sound Archive; and
- b. copies of any Third Party Sound Archive Material recorded by NZFA under section 90 of the Copyright Act, subject to the rights of any holders of copyright in that material under any agreements entered into by NZFA with the holders of those rights.

3 NZFA may retain any copies of Deposited Sound Material or RNZ Sound Material made by NZFA.

15. Miscellaneous

1 NZFA will not assign its interest under this agreement to any other person or body.

2 A waiver by any party of its rights arising from a breach of any term of this agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms and conditions of this agreement.

3 No failure or delay on the part of any party in the exercise of any right or remedy in this agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

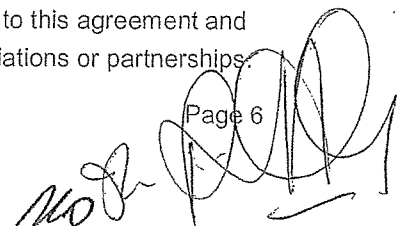
4 The parties acknowledge that this agreement and the Transfer Agreement set out the entire agreement and understanding of the parties in relation to the Sound Archive and supersedes all prior oral or written agreements, understandings or arrangements relating to the Sound Archive and the other subject matter of this agreement.

5 This agreement cannot be varied in any manner except by way of agreement in writing signed by the parties.

6 If any part or provision of this agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of this agreement will be binding on the parties.

16. Construction of this Agreement

1 References to clauses and schedules are to clauses of and schedules to this agreement and references to persons include bodies corporate, unincorporated associations or partnerships.



- 2 The headings in this agreement are for convenience only and have no legal effect.
- 3 The singular includes the plural and vice versa.
- 4 References to parties refer to parties to this agreement.
- 5 Any monetary amounts referred to in this agreement exclude any GST which may be payable.
- 6 This agreement may be signed in any number of counterparts (including facsimile copies) and provided each party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the parties.
- 7 This agreement will be governed by and construed in accordance with the law for the time being in force in New Zealand.

SIGNED


Signed for and on behalf of **The New Zealand Film Archive Nga Kaitiaki O Nga Taonga Whitiwhia** by:



Jane Kominik, Chair

The New Zealand Film Archive Nga Kaitiaki O Nga Taonga Whitiwhia

Signed for and on behalf of **Radio New Zealand Limited** by:



Richard Griffin, Chair
Radio New Zealand

Signed for and on behalf of **The Sound Archives Nga Taonga Korero Limited** by:



Peter Cavanagh, Director
The Sound Archives Nga Taonga Korero

Schedule 2 – Services

Service	Service Detail	Annual Cost (excl GST)
Technical Support	Obsolete equipment maintenance Studio maintenance Satellite receiver Remote receivers	\$ \$ \$ \$
IT Support	Email, internet access, LAN, M drive, Helpdesk Networks and Synchronisation system PC purchasing, software installation, licensing, support, antivirus VRS system, Quadriga, Wavelab Netlogger system	\$ \$ \$ \$ \$
Access	Access to and security for remote recording facilities at transmission sites	\$
Access to and support of SANTK/RNZ systems	NetApp access Vernon Servers and backup server access	\$ \$ \$
Access to and use of RNZ IT systems	Accellion System iNEWS system CoSTAR system	\$ \$ \$
Administration Services	Building Services Reception Security Generator/UPS	\$ \$ \$ \$
Total		\$

Schedule 3 – Assets

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Schedule 4 – Licence for Hobson Street offices

LICENCE AGREEMENT

THIS AGREEMENT is made on

BETWEEN: RADIO NEW ZEALAND LIMITED ("Licensor")

AND: NEW ZEALAND FILM ARCHIVE ("Licensee")

RECITALS:

- A. The Licensor owns the land referred to in Item 1 ("Land").
- B. The Licensee has requested that the Licensor grant to the Licensee a licence to occupy the Premises, together with the right to use the common facilities located within the Building and the Licensor's Fixtures and Fittings located within the Premises. The Licensor has agreed to grant that licence on the terms and conditions of this Agreement.

OPERATIVE PROVISIONS:

1. INTERPRETATION

In this Agreement, including the recitals, unless contrary to or inconsistent with the context:

- 1.1 words importing:
 - (a) the singular include the plural and vice versa; and
 - (b) a gender includes every other gender.
- 1.2 a reference to any thing or matter is a reference to the whole and any part of it;
- 1.3 the word "person" includes a corporation and vice versa;
- 1.4 an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- 1.5 where any clause contains sub-clauses, paragraphs or sub-paragraphs, each sub-clause, paragraph and sub-paragraph however called will be read and construed separately and independently of each other;
- 1.6 a reference to an Item is a reference to an Item of the Reference Schedule;
- 1.7 headings are inserted only for guidance and do not affect the interpretation of this Agreement;
- 1.8 a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws made or issued under that statute;
- 1.9 a reference to a body other than a party to this Agreement:

- (a) which ceases to exist; or
- (b) the powers or functions of which are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- 1.10 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement;
- 1.11 capitalised words shall have the meanings given in the Reference Schedule, unless otherwise specified or defined in this Agreement; and
- 1.12 "working day" shall bear the same meaning ascribed to it in the Property Law Act 2007.

2. LICENCE

In consideration of the Licensee paying to the Licensor the Licence Fee referred to in Item 3, the Licensor grants to the Licensee a non-exclusive licence to use and occupy the Premises, together with the right to use:

- (a) the Licensor's Fixtures and Fittings listed at Item 7 located within the Premises; and
- (b) the common areas of the Building (together with the Licensor's other tenants, licensees and invitees),

on the terms and subject to the conditions contained in this Agreement ("Licence").

3. TERM OF LICENCE

Subject to clause 14, this Licence will operate from the Commencement Date in Item 4 up to and including the Expiry Date in Item 4 ("Term").

4. USE OF THE PREMISES

- 4.1 The Licensee may only use the Premises for the Permitted Use specified in Item 6.
- 4.2 The Licensee is responsible for obtaining all consents required for its occupation and use of the Premises.
- 4.3 The Licensor gives no warranty as to the suitability of the Premises or the use to which the Premises may be put.
- 4.4 The Licensee must comply with any law, instrument, legislation, notice or order affecting the Premises.
- 4.5 The Licensee must use the Premises in a reasonable manner and in a way which causes no damage to the Premises, including, without limitation the Licensee must not:
 - (a) bring upon or store within the Premises or allow to be brought upon or stored within the Premises any machinery goods or things of any offensive noxious illegal or dangerous

nature, or of such weight size or shape as is likely to cause damage to the Building or any surfaced area; or

- (b) use the Premises or allow them to be used for any noisome noxious illegal or offensive trade or business; or
- (c) allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Licensor other tenants and or licensees of the Building adjoining occupiers or property owners, or any other person and generally the Licensee shall conduct the Licensee's business upon the Premises in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons but the carrying on by the Licensee in a reasonable manner of the Permitted Use shall be deemed not to be in breach of this clause.

5. LICENCE FEE AND UTILITIES

- 5.1 The Licensee agrees to pay to the Licensor or as directed by the Licensor the Licence Fee monthly in advance (by automatic electronic funds transfer) during the Term.
- 5.2 In addition to the Licence Fee, the Licensee must pay direct or reimburse the Licensor (as appropriate) in respect of any electricity, water, gas, telephone and other utilities used at the Premises.

6. RISK PASSES TO LICENSEE

- 6.1 The Licensee acknowledges that risk in respect of damage to the Premises passes to the Licensee on the Commencement Date.
- 6.2 The Licensee occupies the Premises at the Licensee's own risk and the Licensor is not liable for any damage or injury caused to:
 - (a) any person entering on the Premises, with or without the permission of the Licensee;
 - (b) any property of the Licensee; or
 - (c) any damage arising from anything emanating from the Premises that may constitute a nuisance,during the Term excluding anything that arises because of the negligent conduct of the Licensor or the Licensor's agent.
- 6.3 The Licensee must hold Public Risk insurance in an amount not less than \$5 million, such policy noting the interests of the Licensor. The Licensee must provide to the Licensor's satisfaction a certificate of currency of such insurance from the insurer, on demand.
- 6.4 The Licensee indemnifies and will keep indemnified the Licensor in respect to any damage, cost, loss, expense or claim suffered or incurred by the Licensor and arising out of the Licensee's occupation or use of the Premises.

7. POSSESSION DOES NOT PASS

This Licence is a licence to occupy only and does not give the Licensee a right to possession or create any equitable estate or proprietary interest in the whole or any part of the Premises which at all times remains vested in the Licensor. Without limiting the generality of the preceding sentence, the Licensor shall at all times be entitled to use occupy and deal with the remainder of the Building and Estate without reference to the Licensee and the Licensee shall have no rights in relation thereto other than the rights of use herein provided.

8. ACCESS TO THE PREMISES

The Licensee must allow the Licensor or the Licensor's authorised representative to enter and inspect the Premises at all reasonable times and for reasonable purposes including, without limitation, (1) carrying out repairs to the Premises or to the Building and inspection of the Premises to ensure that the Licensee is complying with its obligations under this Licence; and (2) for the purpose of showing the Premises to any potential new tenant provided that the Licensor shall use reasonable endeavours to minimise any disturbance to the Licensee.

9. MAINTENANCE OF THE PREMISES

9.1 The Licensee must keep the Premises in good condition and repair having regard to its condition at the Commencement Date.

9.2 The Licensee must notify the Licensor as soon as possible of any damage to the Premises.

9.3 The Licensee must make good any damage that it or its agents cause to the Premises.

9.4 The Licensee must not:

(a) make any external or internal alterations or additions to the Premises; or

(b) affix, paint or exhibit any sign, nameplate or advertisement of any description within, on or to the exterior of the Premises and/or Building,

without the Licensor's prior written approval.

10. LICENSOR CAN RECTIFY NON-COMPLIANCE

If the Licensee does not comply with any of the provisions of this Licence, then without affecting any other right of the Licensor, the Licensor may remedy the non-compliance without giving notice to the Licensee and the Licensee must reimburse the Licensor for any costs incurred in doing so.

11. EXPANSION OR REBUILDING OF THE BUILDING

Application of this section

11.1 This clause 11 will apply in the event of the Licensor electing to expand or rebuild or substantially alter the Building or any part of the Building.

Notice by Licensor

11.2 If in the reasonable opinion of the Licensor any proposed expansion, rebuilding or alteration requires the demolition or alteration of the Premises and/or Building or any part of the Premises and/or Building or if such proposed expansion, rebuilding or alteration means that the Premises will not in the reasonable opinion of the Licensor be suitable or in a suitable location in the Building for the business permitted to be carried out in the Building, the Licensor may give notice in writing (the "**Surrender Notice**") to the Licensee that it requires the Licence to be surrendered on a date ("**Date of Surrender**") to be specified in such notice and in no event being less than three (3) months from the service of the Surrender Notice.

(a) On the Date of Surrender the Licensee will:

- (i) yield up vacant possession of the Premises as if the Licence had expired by lapse of time; and
- (ii) do all such acts and things and sign all such documents as are reasonably required of it by the Licensor.

Alternative premises

11.3 Where the Licensor requires the Licence to be surrendered under clause 11.2, the Licensor will offer the Licensee a licence (the "**New Licence**") of alternative premises (the "**Alternative Premises**") in the Building, such Alternative Premises to be of a Rentable Area and in a location suitable in the reasonable opinion of the Licensor for the conduct of the Licensee's business (having regard among other things to any obligation of the Licensor to provide other licensees of the Building with alternative premises).

11.4 The New Licence will be for a term commencing on the day following the Date of Surrender and terminating on the expiry date of the Licence, such New Licence to be on the same terms and conditions as the Licence:

11.5 The Licensor will use its best endeavours to have the Alternative Premises ready for fitting out by the Licensee on or before the Date of Surrender but the Licensee acknowledges that if circumstances so require, the Licensor may require that the Licensee move to the temporary premises set out in the Offer of Alternative Premises until the Alternative Premises are ready. The Licensee's occupation of any such temporary premises will be on the following terms:

- (i) The Licence Fee will be the same as under the Licence, regardless of the location and condition of the temporary premises PROVIDED that if the area of the temporary premises is [10%] smaller than the Premises, the Licensor will reduce the Licence Fee, on a pro rata basis, for the period that the Licensee is required to occupy the temporary premises;
- (ii) Operating Expenses and all other payments will be made in accordance with the Licence;
- (iii) the term of occupation by the Licensee of the temporary premises will continue until the Alternative Premises are available; and

- (iv) all other terms of the Licence will apply, as applicable.

No compensation

11.6 Except as expressly provided, no compensation whatsoever will be payable by the Licensor to the Licensee, whether for interruption of its business, loss of profits arising from such interruption, relocation costs or otherwise however arising.

12. DEFAULT

If at any time during the Term:

- (a) any Licence Fee payable by the Licensee is in arrears for ten (10) working days;
- (b) there is a default by the Licensee in respect of any obligation of the Licensee other than payment of the Licence Fee and such default is not remedied within a reasonable period after notice has been given to the Licensee or, in the case of repairs required to be effected by the Licensee, such repairs are not completed within a reasonable time;
- (c) execution is levied against any of the assets of the Licensee and remains unsatisfied;
- (d) the Licensee either:
 - (i) goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by the Licensor);
 - (ii) is wound up or dissolved;
 - (iii) enters into a scheme of arrangement with any of its creditors; or
 - (iv) has a receiver appointed;

subject to the Licensor having served, in accordance with section 353 of the Property Law Act 2007, a valid notice pursuant to section 245 or 246 (as the case may be) of the Property Law Act 2007, it shall be lawful for the Licensor to re-enter the Premises and determine this Licence and remove or otherwise deal with any goods, fittings, fixtures and effects found on the Premises **without** releasing the Licensee from any liability in respect of any antecedent breach.

13. TERMINATION OF THE LICENCE

This Licence will terminate on the earlier of:

- (a) the Expiry Date in Item 4;
- (b) the date the Licence is terminated in accordance with clauses 12 or 22 (as the case may be);
or
- (c) on one (1) week's notice served by either party at any time, **provided always** that the party serving such notice must not be in breach of this Licence at the time it serves such notice.

14. VACATION OF THE PREMISES

On or before the termination of this Licence, the Licensee must:

- (a) vacate the Premises; and
- (b) leave the Premises (including without limitation the Licensor's Fixtures and Fittings) in a clean and tidy state, removing any additions, alterations or signage of any kind which was carried out/installed in accordance with clause 9 and making good any damage caused by such removal, and otherwise leave the Premises in a state of good repair, having regard to its condition at the Commencement Date.

15. HOLDING OVER PERIOD

Following expiry of the Term, if the Licensor does not object to the Licensee remaining in the Premises, the Licensee may continue to occupy the Premises on a week by week basis on the terms and conditions contained in this Licence, other than clause 14(a), but subject always to clauses 14(b) and 13(c). The Licence under this clause 16 may be terminated by either party on two week's written notice to the other **provided always** that the party serving such notice must not be in breach of this Licence at the time it serves such notice.

16. LICENCE NOT TRANSFERABLE

This Licence is personal to the Licensee and the Licensee must not assign this Licence or let or part with possession of any part of the Premises.

17. NOTICES

Notices under or relating to this Licence may be served on the Licensee by leaving them at the Premises, or on either party, by delivering, posting or faxing them to the respective address or facsimile number stated in Item 5.

18. GST

18.1 Definitions: In this section:

"Act" means Goods and Services Tax Act 1985.

"Agreement" means this Licence Agreement between the parties.

"basic consideration" means any and all consideration to be paid or provided by the Licensee for any supply of goods and services by the Licensor under this Licence (other than tax payable pursuant to this section).

"goods and services tax" means goods and services tax charged in accordance with the Act.

"goods", "services", and "taxable supply" have the meanings assigned to them by the Act.

18.2 Amounts are GST exclusive: The basic consideration is not inclusive of the goods and services tax.

- 18.3 **GST payable:** In addition to the basic consideration, the Licensee shall pay to the Licensor the amount of all goods and services tax chargeable on any taxable supply by the Licensor under this Licence.
- 18.4 **Payment of GST:** Any amount payable by the Licensee pursuant to this Licence shall be payable on the date on which the relevant supply is deemed to take place by virtue of the Act and shall be recoverable and bear interest as though it was the Licence Fee.
- 18.5 **Default in payment:** If the Licensee defaults in payment on the due date of any amount payable pursuant to clause 19.3, without prejudice to the Licensor's other rights and remedies, the Licensee shall pay to the Licensor, upon demand, an amount equal to the amount of any additional tax that shall have become chargeable pursuant to the Act.
- 18.6 **No obligation on Licensor:** As between the Licensor and the Licensee, the Licensor shall not be obliged to pay any goods and services tax or additional tax, or to take any other steps to minimise the liability in respect of such tax or additional tax, until the corresponding payment is received from the Licensee.

19. COUNTERPARTS

If this Licence is signed in counterparts then each is deemed to be an original and together they constitute one document.

20. NEGLECT OF OTHER TENANT OR LICENSEE

The Licensor shall not be responsible to the Licensee for any act of default or neglect of any other tenant or licensee of the Building and/or the Estate.

21. NOTIFICATION OF DEFECTS

The Licensee shall give to the Licensor prompt notice of any accident to or defect in the Premises or Building of which the Licensee may be aware and in particular, but without limitation, in relation to any pipes or fittings used in connection with the water electrical gas or drainage services to the Premises.

22. DAMAGE TO OR DESTRUCTION OF PREMISES

If the Premises or any portion of the Building of which the Premises form part shall be destroyed or so damaged so as to render, in the Licensor's reasonable opinion, the Premises or a material part thereof untenable, then the Term shall at once terminate as at the date the Licensor notifies the Licensee of such termination. Any termination pursuant to this clause shall be without prejudice to the rights of either party against the other.

23. NON-WAIVER

No waiver by the Licensor of any breach of this Licence shall operate as a waiver of any similar or subsequent breach. No custom or practice which may exist or develop between the parties shall

be construed to waive or lessen any rights, powers or privileges at law or in equity for the Licensor to insist upon the strict observance by the Licensee of this Licence.

24. LICENSEE WARRANTY

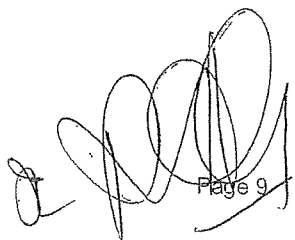
The Licensee warrants that it has obtained all necessary consents to enter into this Licence and the persons executing on behalf of the Licensee warrant they have the necessary authority to bind the Licensee pursuant to this Licence.

25. ESSENTIAL TERMS

Any breach of the following covenants by the Licensee shall be deemed to be a breach of an essential term of this Licence:

- (a) the covenant to pay the Licence Fee and any other moneys to the Licensor where such breach gives the Licensor the right to terminate this Licence under this Licence;
- (b) the covenant dealing with assignments, subletting and parting with possession;
- (c) the covenant dealing with the use of the Premises;
- (d) the covenant dealing with alterations to the Premises; and

the Licensee covenants to compensate the Licensor in respect of any breach of an essential term of this Licence and the Licensor is entitled to recover damages from the Licensee in respect of such breaches. The Licensor's entitlement under this clause is in addition to any other remedy or entitlement to which the Licensor is entitled (including the right to terminate this Licence).

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EXECUTED as an agreement.

Executed by NEW ZEALAND FILM ARCHIVE

Jane Kominik
Signature
JANE KOMINIK
Name (print)

31. 8. 2012
Date:

SIGNED on behalf of **RADIO NEW
ZEALAND LIMITED**
in the presence of:

[Signature]
Witness Signature

K. D. LAW
Print Name

EXECUTIVE
Occupation

WELLINGTON
Address

RELEASED UNDER THE OFFICIAL INFORMATION ACT

REFERENCE SCHEDULE

Item 1:	Land	The land being more particularly described in Certificates of Title [] ([] Registry).
Item 1B:	Building:	The building comprising [] as outlined on the plan annexed to this Licence and marked "A".
Item 2:	Premises	That part of [] in the Building comprising 56 square metres of office space as directed and demarcated by the Licensor on the Commencement Date at the Licensor's sole discretion.
Item 3:	Licence Fee	\$ _____ per month plus GST.
Item 4:	Term:	Commencement Date: [] Expiry Date: []
Item 5:	Notices	Licensor: Level 2 Radio New Zealand House 155 The Terrace PO Box 123 WELLINGTON Attention: Peter Cavanagh Chief Executive Licensee: 84 Taranki Street PO Box 11449 WELLINGTON Attention: Frank Stark Chief Executive
Item 6:	Permitted Use	Office
Item 7:	Licensor's Fixtures and Fittings:	.

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