



**AGREEMENT BETWEEN**

**NATIONAL FILM AND SOUND ARCHIVE OF AUSTRALIA**

**ABN 41 251 017 588**

**and**

**<Customer's Name>**

**ABN XX XXX XXX XXX [if applicable]**

**FOR**

**Acquisition and Removal of Excess Audio Collection Items**

**CONTRACT NO. 2021 / P242**

**THIS CONTRACT** is made between

**NATIONAL FILM AND SOUND ARCHIVE OF AUSTRALIA**, ABN 41 251 017 588, of McCoy Circuit, Acton in the Australian Capital Territory, 2601, a body corporate established pursuant to the *National Film and Sound Archive of Australia Act 2008* (Cth) (**NFSA**)

**AND**

[Name, Physical Address, ABN (if applicable)] (the **Customer**)

## **BACKGROUND**

The NFSA requires the Customer to acquire and remove one or more excess audio collection items currently housed within pallets at the NFSA Mitchell Warehouse, ACT. A copy of the original Request For Tender has been attached at *Annexure A – NFSA RFT 2021/P242 – Excess Audio Collection Items*.

The Customer has fully informed itself on all aspects of the pallet(s) acquisition and removal, entitled ‘Services’ for the purposes of this Contract. A copy of the Customer’s offer to perform the Services has been attached at *Annexure B – Customer Offer*.

The NFSA has agreed to accept the Customer’s offer to perform the Services upon the terms and conditions contained in this Contract.

**THE PARTIES AGREE** as follows:

### **1. Interpretation**

#### **1.1 In this contract:**

**Commonwealth Record** means a “Commonwealth record” as defined in the *Archives Act 1983* (Cth);

**Contract** means this contract and includes, in order of precedence, the body, Schedule 1, and any relevant Attachments.

**Contract Material** means all material brought or required to be brought into existence as part of or for the purpose of performing the Services including, but not limited to, documents, equipment, information and data stored by any means and includes but is not limited to the items listed in Schedule 1, Item C [Contract Material];

**Fees** means the fees specified at Schedule 1, Item E [Fees];

**General Interest Charge Rate** means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day;

**GST Law** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Insurance** means the type(s) of insurances specified, of a value no less than the minimum level(s) and for a duration no shorter than the minimum period(s) specified in Schedule 1, Item I [Courier Company Insurance] so far as they relate to the courier company proposed for removal;

**Intellectual Property** includes all copyright (including rights in relation to phonograms and broadcasts); all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: moral rights; the rights of performers; or rights in relation to confidential information;

**Moral Rights** includes the following rights of an author of copyright material:

- i. the right of attribution of authorship;
- ii. the rights of integrity of authorship; and
- iii. the rights not to have authorship falsely attributed;

**NFSA** means the National Film and Sound Archive of Australia;

**NFSA Project Officer** means the representative of the NFSA specified at Schedule 1, Item G [NFSA Project Officer];

**Customer** means the party named on page 2 who by the Contract undertakes to provide the Services;

**Customer Contact Officer** means the representative of the Customer specified at Schedule 1, Item H [Customer Contact Officer]

**Services** means the services to be performed under the Contract as described in Schedule 1, Item B [Services];

**Specified Personnel** means any Customer personnel who will undertake the Services, including those named at Schedule 1, Item D [Specified Personnel];

**Term** means the period between commencement and completion of the contract as specified in Schedule 1, Item A [Term and Timing];

**Timing** means the start and finish dates and times specified in Schedule 1, Item A [Term and Timing];

**Travel and Accommodation Expenses** means the expenses specified at Schedule 1, Item F [Travel and Accommodation Expenses] or otherwise approved in advance by the NFSA in accordance with clause 8 [Travel and Accommodation Expenses].

1.2 Words importing a gender include any other gender.

1.3 Words in the singular include the plural and words in the plural include the singular.

## **2. Term and Timing**

2.1 The Customer must comply with the Term and Timing for the performance of the Services.

2.2 The NFSA may extend the finish date by giving the Customer notice of two weeks in writing.

## **3. Services**

3.1 The Customer must ensure that the Services are conducted in a professional manner and otherwise strictly comply with all applicable laws, standards and policies and the requirements of this Contract.

## **4. Contract Material**

4.1 On the expiration or earlier termination of the Contract, the Customer shall deliver to the NFSA all Contract Material.

4.2 The Customer shall ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of the Contract.

4.3 The title to and ownership of intellectual property in all Contract Material shall vest upon its creation in the NFSA. The Customer warrants that it has obtained appropriate written assignments from any third party Intellectual Property rights holders in the Contract Material, as required to comply with this clause 4.

4.4 The Customer warrants that it has obtained written consents from all Moral Rights holders in the Contract Material, to enable the NFSA and its licensees to do anything which may infringe Moral Rights in the Contract Material.

4.5 Unless agreed otherwise, clauses 4.2 and 4.3 do not apply to the rights in any content supplied by the NFSA specifically for inclusion in the Contract Material.

## **5. Work Health and Safety**

5.1 The Customer agrees, in carrying out this Contract, to comply with:

- a) all relevant legislation, codes of practice and national standards relating to work health and safety, including in relation to consultation, representation and participation; and
- b) all applicable policies and procedures relating to work health and safety including those that apply to the NFSA's premises when using those premises.

## **6. Specified Personnel**

6.1. The Customer must ensure that the Services are undertaken by the Specified Personnel named in Schedule 1, Item D [Specified Personnel]. Where unnamed or supplementary, any Customer personnel who will undertake the Services is also the Specified Personnel.

## **7. Fees**

7.1 The Customer must pay the Fees to the NFSA for the Services in accordance with this clause 7.

7.2 Subject to execution of this Contract between the NFSA and the Customer, payment will be made 7 days from receipt of a correctly rendered invoice to the Customer.

## **8. Travel and Accommodation Expenses**

8.1. The NFSA must pay the Travel and Accommodation Expenses in accordance with this clause 8.

8.2. Any interstate travel to be undertaken by the Customer must be approved by the NFSA in advance of the travel and will be booked using the NFSA's corporate travel agent. The Customer's accommodation and travel expenses will be consistent with APS travel allowances for non-SES staff.

## **9. Taxes, Duties and Government Charges**

9.1 Except as provided by this clause 9, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract shall be borne by the Customer.

9.2 The following terms have the meanings respectively given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth): consideration; GST; GST Law; input tax credit; supply; taxable supply; and tax invoice.

9.3 Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.

9.4 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient must pay without set-off an additional amount to the supplier equal to the GST imposed on the supply in question.

9.5 No party may claim from the other party under this Contract any amount for which the first party may claim an input tax credit.

## **10. Invoice Procedure and Taxation Matters**

10.1 Invoices issued by the NFSA will be correctly addressed and shall include the following information:

- a) title of Services;
- b) name of the NFSA Project Officer;
- c) NFSA Project Officer number;
- d) The NFSA's Australian Business Number; and
- e) GST component of the amount invoiced.

## **11. Project Officers**

11.1 The NFSA Project Officer has responsibility for the supervision of this Contract on behalf of the NFSA and has authority to send and receive any written notification under the Contract.

11.2 The Customer Contact has responsibility for the supervision of this Contract on behalf of the Customer and has authority to send and receive any written notification under the Contract.

## **12. Disclosure of Information**

12.1 Except as permitted by clause 12.1, the Customer, its employees or agents shall not disclose or make public any information or material acquired or produced in connection with or by the performance of the Services without prior approval in writing of the NFSA.

12.2 The Customer may disclose the information described in clause 12.1:

- a) to its employees who require that information to perform this Contract and its advisers to obtain advice on its rights or obligations under this Contract;
- b) to the extent requirement by any Law or government or governmental body, authority or agency having authority over the Customer; or
- c) if required in connection with legal proceedings,

but in each case, where permitted by Law, the Customer must give the NFSA sufficient notice of any proposed disclosure so as to enable the NFSA to seek (as permitted) a protective order or other remedy to prevent the disclosure.

## **13. Security**

13.1 The Customer and its Specified Personnel shall:

- a) comply with the Australian Government Protective Security Policy Framework (PSPF) and the Australian Government Information Security Manual (ISM), as directed by the NFSA;
- b) when using the NFSA's premises or facilities, comply with all security and office regulations and policies, including policies on protective security in effect at those premises or in regard to those facilities, as notified by the NFSA from time to time; and

- c) comply with any other security requirements (including authorized disclosures) notified to the Customer by the NFSA.

#### **14. Privacy**

- 14.1 The Customer must not do any act or engage in any practice which, if done or engaged in by the NFSA, would be a breach of an Australian Privacy Principle under the *Privacy Act 1988* (Cth).
- 14.2 The Customer must comply with any directions, guidelines, determinations or recommendations notified to it by the NFSA to the extent that they are consistent with the obligations referred to in clause 14.
- 14.3 The Customer agrees to notify the NFSA immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 14.

#### **15. Insurance**

- 15.1 The Customer agrees that their proposed courier company for removal will:
  - a) effect and maintain the Insurance; and
  - b) on request, be able to provide proof of Insurance acceptable to the NFSA.

#### **16. Customer to Keep Books and Records**

- 16.1 The Customer must:
  - a) keep and must require its subcontractors to keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by the NFSA under this Contract to be determined; and
  - b) retain and require its subcontractors to retain for a period of seven years after termination or expiration of this Contract all books and records relating to the Services.
- 16.2 The Customer must bear its own costs of complying with this clause.

#### **17. Subcontracting**

- 17.1 The Customer must:
  - a) obtain the prior written approval of the NFSA, which may be conditional, before engaging any subcontractors for the purposes of this Contract;
  - b) ensure that any subcontract for the performance of any part of the Customer's obligations is consistent with, and gives effect to, the Customer's obligations under this Contract;
  - c) at the request of the NFSA, make available to the NFSA any details of subcontractors engaged by the Customer;

on the understanding that the existence of any subcontract does not reduce the Customer's liability to the NFSA under this Contract.

## **18. Access to Documents**

- 18.1 The Customer agrees to give the NFSA Project Officer, or any persons authorised in writing by the NFSA, access to premises where the Services are being performed and to permit those persons to inspect and take copies of any material relevant to the Services.
- 18.2 Where:
- a) the NFSA has received a request for access to a document; and
  - b) the document:
    - i. is created by, or in the possession of, the Customer or any subcontractor; and
    - ii. relates to the performance under this Contract of services to the public on the NFSA's behalf (and not to the entry into the Contract),

the NFSA may at any time by written notice require the Customer to provide the document to the NFSA.

- 18.3 Where the Customer receives a notice under clause 18.1, it must promptly comply with it.
- 18.4 In addition to its obligations under clause 17a), the Customer must include in any subcontract relating to the performance of this Contract provisions that will enable the Customer to comply with its obligations under this clause 0.
- 18.5 The Customer must bear its own costs of complying with this clause.

## **19. Archives Act 1983**

- 19.1 The Customer must not destroy or arrange for, nor effect, a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the NFSA and the National Archives of Australia.
- 19.2 Where the NFSA and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to the Customer, the Customer must comply in every respect with the requirements of the *Archives Act 1983* (Cth) or guidelines issues by the National Archives of Australia.
- 19.3 The Customer must comply with any direction given by the NFSA for the purpose of transferring Commonwealth Records to the National Archives of Australia or provided the National Archives of Australia with full and free access to Commonwealth Records.

## **20. Conflict of Interest**

- 20.1 The Customer warrants that, at the date of entering into the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract.
- 20.2 If, during the Contract Period, a conflict or risk of conflict of interest arises, the Customer undertakes to:



- a) notify the NFSA immediately in writing of that conflict or risk; and
- b) take any steps the NFSA reasonably requires to resolve or otherwise deal with the conflict or risk.

## **21. Negation of Employment and Agency**

- 21.1 The parties agree that the relationship between the Customer and the NFSA under this Contract will be that of independent contractor and not employment.
- 21.2 The Customer shall not represent itself, and shall ensure that its employees and any subcontractors do not represent themselves, as being employees, partners or agents of the NFSA.
- 21.3 The Customer shall not by virtue of this Contract be or for any purpose be deemed to be an employee, partner or agent of the NFSA. The Customer acknowledges that it is responsible for its own taxation installment deductions and, notwithstanding any other clause in this Contract, for obtaining ensuring the proposed courier company maintains adequate insurances, including but not limited to those for personal injury or death or damage or loss of property arising out of or connected with the Services.
- 21.4 The Contract is entered into on the understanding that the NFSA is not required to make any superannuation contributions in connection with the Contract.
- 21.5 If, despite clause 21.3, the NFSA is legally required to make superannuation contributions in relation to the Customer's officers, employees, agents or subcontractors, then:
  - a) the Customer must within 14 days after the execution of the Contract, inform the NFSA of the fund into which the Customer is to pay the superannuation entitlements. This fund must be a fund which meets the requirements of the relevant legislation; and
  - b) these superannuation contribution will be deducted from the total fee payable to the Customer under the Contract.

The NFSA may also deduct from the fees payable to the Customer any amounts which it is legally required to withhold under the *Taxation Administration Act 1953* (Cth), the *Income Tax Act 1936* (Cth) or any other tax law.

## **22. Unpaid Judgments**

- 22.1 The Customer warrants that, as at the start of the Term of the Contract, it and its subcontractors do not have any judicial decision against them (not including decisions under appeal) relating to employee entitlements in respect of which they have not paid the claim.

## **23. Termination or Reduction of Contract – Not for Default**

- 23.1 The NFSA may, by written notice, terminate the Contract or reduce the scope of the Contract and upon such notice being given the Customer shall cease or reduce work as required by the notice and shall immediately do everything possible to mitigate its losses.

- 23.2 Upon termination or reduction under clause 23, the Customer shall be entitled to such sums as are fair and reasonable, as determined by the NFSA, in respect of any loss sustained unavoidably by the Customer due to the termination or reduction provided that:
- a) the Customer shall not be entitled to compensation for loss of prospective profits; and
  - b) the NFSA shall not be liable to pay any sum which, in addition to any amounts paid or due or becoming due to the Customer under the Contract, would together exceed the full price of the Services ordinarily payable under the Contract.

## **24. Termination of Contract – for Default**

- 24.1 If the Customer fails within 10 business days after receipt of written notice from the NFSA to remedy any default in performance of the following obligations, namely:
- a) to commence or to proceed at the rate of progress strictly in accordance with the Contract; or
  - b) to perform or observe the terms and conditions of the Contract,

the NFSA may, by written notice, immediately terminate the Contract and recover from the Customer any loss or damage suffered by the NFSA.

- 24.2 For the avoidance of doubt, the provisions of clause 23.1 do not apply where the NFSA terminates the Contract in accordance with clause 24 so that the NFSA will not have any obligation to make any payments of the type referred to in clause 23.1.

## **25. Dispute Resolution and Good Faith**

- 25.1 Subject to clause 25.2, a dispute arising under this Contract shall be dealt with by the parties in good faith through alternative methods such as negotiation or mediation without resorting to litigation for a reasonable period after the dispute is notified by one party to the other party.
- 25.2 Subject to clause 25.2, both parties agree to act in good faith in the exercise of their rights and the performance of their obligations under this Contract.
- 25.3 Clause 25 and 25.2 do not limit or affect the NFSA's rights to commence legal proceedings for urgent interlocutory relief or to terminate or reduce this Contract under general law or under clauses 23 and 24.

## **26. Applicable Law**

- 26.1 The Contract shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory and the parties submit to the jurisdiction of the courts of that Territory.

26.2 The Customer shall ensure that the work done under the Contract (including any work by a subcontractor) complies with the laws from time to time in force in the State or Territory in which the Services, or any part thereof, are to be carried out.

**27. Variation of Agreement**

27.1 No agreement or understanding that varies or extends the Contract (including in particular the scope of the Services) shall be legally binding upon either party unless in writing and agreed by both parties.

**28. Survival**

28.1 Clauses 16, 18 and 19 apply for the Contract Period and for seven years from the termination or expiry of this Contract.

**29. Nil Return of Acquired and Removed Pallets**

29.1 The Customer agrees and warrants that once removed from the NFSA premises, any acquired pallets and/or their contents remain the sole property of the Customer, and the NFSA will not, under any circumstances, accept or take delivery of any returned materials.

**30. Post-acquisition Disposal of Pallets and Contents**

30.1 The Customer agrees and warrants that any acquired and removed pallets and contents will be disposed of in a manner that is consistent with state and territory laws and regulations, and will not be illegally dumped or disposed of in a manner that is reasonably likely to defame or bring disrepute to the NFSA and the Commonwealth.

**EXECUTED AS A CONTRACT**

**IF CUSTOMER IS A COMPANY:**

Signed for and on behalf of the Customer in accordance with s127 of the *Corporations Act* (Cth) by

\_\_\_\_\_

Name of first signatory

and by

\_\_\_\_\_

Name of second signatory

\_\_\_\_\_

Signature

Director/Secretary/Sole Director (select applicable title)

\_\_\_\_\_

Signature

Director/Secretary (select applicable title)

Date:

**NATIONAL FILM AND SOUND ARCHIVE OF AUSTRALIA**

Signed for and on behalf of the National Film and Sound Archive of Australia by

\_\_\_\_\_

Name of signatory

\_\_\_\_\_

Signature

Date:

## SCHEDULE 1

### ITEM A - TERM AND TIMING (SEE CLAUSES 1 & 2)

#### Term

The Contract commences on 1 August 2021 and is to be completed by 31 October 2021.

#### Timing

The timing of the Services to be performed during the Term is:

PALLETS TO BE ACQUIRED	COURIER COMPANY	REMOVAL DATE
[Detail Pallet Numbers]	[Courier Company Name]	Not later than 31 October 2021, to be mutually agreed and schedule between the NFSA and the Customer

### ITEM B - SERVICES (SEE CLAUSES 1 & 3)

Services to be provided are:

- The acquisition and removal of [XX] pallets from the NFSA Mitchell Warehouse (ACT) by not later than 31 October 2021.

A summary of the pallets to be provided is set out below:

Pallet Type	Pallet Dimensions	Indicative Pallet Contents

For additional reference, a copy of the NFSA Request For Tender is attached at *Annexure A*, and a copy of the Customer's Offer is attached at *Annexure B*.

### ITEM C – CONTRACT MATERIAL (SEE CLAUSES 1 AND 4)

Not applicable.

### ITEM D - SPECIFIED PERSONNEL (SEE CLAUSES 1 & 6)

Not applicable.

**ITEM E - FEES (SEE CLAUSES 1 & 7)**

The Customer agrees to pay the NFSA \$[XX] (GST Inclusive) for the acquisition and removal of the pallets set out in Item B – Services, payable within 7 days upon receipt of a correctly rendered invoice following Contract execution, and prior to any proposed removal occurring.

**ITEM F - TRAVEL AND ACCOMMODATION EXPENSES (SEE CLAUSES 1 & 8)**

Not applicable.

**ITEM G - NFSA PROJECT OFFICER (SEE CLAUSES 1 & 11)**

Name: [XX]

Telephone: [XX]

Email: [XX]

**ITEM H – CUSTOMER CONTACT OFFICER (SEE CLAUSES 1 AND 11.1)**

Name: [XX]

Telephone: [XX]

Email: [XX]

**ITEM I – COURIER COMPANY INSURANCE (SEE CLAUSES 1 AND 15)**

1. workers' compensation as required by law
2. public liability insurance to a value of \$10 million
3. professional negligence insurance to a value of \$10 million

**Annexure A – NFSA RFT 2021/P242 – Excess Audio Collection Items**

**A copy of NFSA RFT 2021/P242 – Excess Audio Collections Items follows this page.**

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**Annexure B – Customer Offer**

**A copy of the Customer Offer follows this page.**

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