Master Digitisation Agreement

Department of Internal Affairs

[insert name of Contributing Organisation]
MASTER DIGITISATION AGREEMENT

Date:

PARTIES

The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Department of Internal Affairs (Department)

[insert full legal name] at [city] (Contributing Organisation)

BACKGROUND

A The Department is engaged from time to time in the digitisation of archived newspapers for the Papers Past website operated by the National Library of New Zealand Te Puna Mātauranga o Aotearoa, at http://paperspast.natlib.govt.nz.

B The Contributing Organisation may be able to provide microfilm copies of newspapers for digitisation by the Department, or may wish to collaborate with the Department’s newspaper digitisation programme in other ways.

C To that end, the Department and Contributing Organisation may from time to time enter into one or more Statements of Work, providing for the digitisation of a particular series of newspapers identified in that Statement of Work. This Agreement sets out the terms and conditions that will govern each such Statement of Work.

THE PARTIES AGREE as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this agreement, and in relation to each Statement of Work, unless the context requires otherwise:

Collection Point means the “Collection Point” specified in the Statement of Work.

Digitisation means the process of digitisation of Newspapers carried out by or for the Department, as contemplated by this Agreement, including (where applicable) the collection of Loaned Microfilms from the Collection Point, the creation of Intermediate Microfilms for digitisation, and the return of Loaned Microfilms to the Return Point.

Digitisation Costs means the actual and reasonable costs incurred by the Department for the purpose of carrying out the Digitisation.

Digitised Data means digitised copies of the Newspapers, and any compilation or arrangement of those copies, produced by or for the Department in the course of Digitisation.
Intermediate Microfilms means microfilm copies of the Master Microfilms.

Loaned Microfilms means microfilms supplied (or to be supplied) by the Contributing Organisation, as identified in the Statement of Work; together with any Intermediate Microfilms created by the Department but owned by the Contributing Organisation pursuant to clause 3.3.

Master Microfilms means the master microfilm copies of the Newspapers.

Metadata means metadata (for example, title, URL, thumbnail image, thumbnail URL and licensing information) associated with each item of Digitised Data, and any compilation or arrangement of that metadata, compiled or created by or for the Department in the course of Digitisation.

Metadata Service means the “Metadata Service” specified in the Statement of Work.

New Copyright means new copyright (if any) created in the course of Digitisation.

Newspapers means the “Newspapers” identified in the Statement of Work.

Personnel in relation to a party, means a person acting as an employee, agent, contractor or sub-contractor of that party. For this purpose, neither party will be regarded as Personnel of the other, and the fact that a person is part of one party’s Personnel does not also make that person part of the other party’s Personnel.

Return Point means the “Return Point” specified in the Statement of Work.

Senior Manager means the manager to whom the Relationship Manager reports.

Statement of Work means a document that identifies itself as a “Statement of Work” governed by this agreement, and has been signed by both the Department and the Contributing Organisation. A suggested form of Statement of Work is attached as a Schedule to this agreement.

Timetable means the “Timetable” specified in the Statement of Work.

Website means the “Website” specified in the Statement of Work.

1.2 Construction
In the construction of this agreement, unless the context requires otherwise:

Assignment: as far as legally possible, an assignment of Intellectual Property Rights includes present assignment of future rights;

Currency: a reference to any monetary amount is to New Zealand currency;

Defined Terms: words or phrases appearing in this agreement with capitalised initial letters are defined terms and have the meanings given to them in this agreement;
Documents: a reference to any document, including this agreement, includes a reference to that document as amended or replaced from time to time;

Headings: headings appear as a matter of convenience and do not affect the construction of this agreement;

Inclusions: a reference to "includes" is a reference to "includes without limitation", and "include", "included" and "including" have corresponding meanings;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule does not apply to this agreement;

Parties: a reference to a party to this agreement or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Related Terms: where a word or expression is defined in this agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

Writing: a reference to "written" or "in writing" includes email and any commonly used electronic document format such as .DOC or .PDF.
OVERVIEW

2.1 Term
This agreement begins as soon as it has been signed by both parties, and will continue in force until terminated in accordance with its terms or at law.

2.2 Relationship Manager
Each party will maintain the appointment of a Relationship Manager responsible for managing this agreement and the parties’ relationship under it, including overseeing the negotiating and implements of Statements of Work, and acting as a first point of contact for any issues that arise. A party may change its Relationship Manager by giving the other party not less than 14 days’ written notice, providing the name and contact details of the incoming Relationship Manager.

2.3 Statements of Work
The parties may from time to time enter into a Statement of Work relating to a particular series of Newspapers. Neither party will have any obligations or liability under this agreement in relation to any newspapers, unless and until the parties have signed a Statement of Work in respect of those newspapers. Each signed Statement of Work will be deemed to form part of this agreement.

2.4 Order of priority
Where the provisions of this agreement conflict with a Statement of Work, the former will prevail, except to the extent that the Statement of Work is specifically expressed as overriding the provisions of this agreement, and/or this agreement specifically provides that its provisions are subject to the Statement of Work.

DIGITISATION

3.1 Collection of Loaned Microfilms
If the Statement of Work contemplates the provision of Loaned Microfilms by the Contributing Organisation, the Contributing Organisation will make the Loaned Microfilms available for collection by the Department from the Collection Point. The Contributing Organisation will use reasonable endeavours to ensure that this occurs in a timely manner consistent with the Timetable.

3.2 Holding of Loaned Microfilms
The Department will hold any Loaned Microfilms as a bailee for the Contributing Organisation. The Contributing Organisation gives its permission (as owner of the physical media) for the duplication and digitisation of the Loaned Microfilms in accordance with this agreement. To avoid doubt, this clause 3.2 is not a copyright licence.

3.3 Intermediate Microfilms
The Department will arrange for the creation of Intermediate Microfilms where none exist, or where Intermediate Microfilms supplied by the Contributing Organisation are unsuitable for digitisation. Ownership (but not copyright) in Intermediate Microfilms created by the Department in the course of Digitisation will vest in accordance with the Statement of Work.
3.4 **Process**
The Department will carry out the digitisation of the Newspapers from the Loaned Microfilms (or where applicable, from any other suitable microfilm copies held by the Department) in accordance with the standard specifications stipulated by the Department from time to time, subject to any specific requirements set out in the Statement of Work. This includes any image and text capture and other processing to enhance the Digitised Data, carrying out quality assurance of the Digitised Data, and managing any reprocessing required by the Department for that purpose.

3.5 **Data Delivery**
The Department will deliver a copy of the Digitised Data and associated Metadata to the Contributing Organisation, in the format and at the frequency specified in the Statement of Work.

3.6 **Data Storage**
The Department will store a copy of the Digitised Data so that all, or a portion, of the Digitised Data can be transferred to the National Digital Heritage Archive to ensure it is preserved in perpetuity.

3.7 **Return of Loaned Microfilms**
The Department will return each batch of Loaned Microfilm to the Return Point, for collection by the Contributing Organisation, promptly after that batch has been Digitised.

3.8 **Timetable**
The Department will use reasonable endeavours to ensure that Digitisation occurs in accordance with the Timetable.

4 **PUBLICATION**

4.1 **Website and Metadata Service**
The Department will make the Digitised Data available on the Website, and will make the Metadata available for the Metadata Service, for so long as the Website and Metadata Service continue to be available to the public. The Department may withdraw material from the Website and/or Metadata Service where it forms the view that this is necessary to avoid infringing the intellectual property rights of one or more third parties.

4.2 **Reporting**
Unless the Statement of Work provides otherwise, the Department will provide the Contributing Organisation with a high-level report on usage statistics of the Website on request, up to a maximum of one request per annum, for so long as the Digitised Data is available on the Website.

4.3 **Acknowledgment**
The Department will acknowledge the Contributing Organisation in the form and context specified in the Statement of Work, for at least the minimum period specified in the Statement of Work. From the end of that period, the Department will use reasonable endeavours to continue that acknowledgment in a similar form.
5 DIGITISATION COSTS

5.1 Cost Sharing
The parties will share the Digitisation Costs in the proportions specified in the
Statement of Work. The Statement of Work sets out the Department’s initial (non-
binding) estimate of the total Digitisation Costs that will be required to complete the
Digitisation of all the Newspapers.

5.2 Invoicing and payment
The Department will invoice the Contributing Organisation for its share of the
Digitisation Costs at the frequency specified in the Statement of Work. The
Contributing Organisation will pay each correctly rendered invoice on or before the
20th day of the month following the month of receipt.

5.3 Invoice disputes
If the Contributing Organisation disputes an invoice in good faith, by giving written
notice to the Department within 15 days of receiving that invoice, the Contributing
Organisation may withhold the disputed sum until the dispute is resolved, but will
pay the undisputed portion in accordance with clause 5.2. The obligations of each
party under this agreement will continue while the disputed is being resolved.

6 COPYRIGHT AND LICENSING

6.1 IP Overview
As at the date of each Statement of Work, each party warrants that, to the best of
its Relationship Manager’s knowledge after making reasonable enquiry, the status
and ownership of the copyright in the Newspapers and Loaned Microfilm, and where
applicable the rights of that party as a licensee of that copyright, are consistent with
the “IP Overview” set out in the Statement of Work.

6.2 New Copyright
The parties intend that New Copyright arising from Digitisation (if any) will vest in
accordance with the Statement of Work. Accordingly, to the extent necessary to
ensure that this intention is fulfilled, each party hereby assigns to the other all right,
title and interest in any New Copyright which the first party may hold at any time,
now or in the future, and will ensure that its Personnel do likewise in respect of any
New Copyright which they may hold at any time, now or in the future.

6.3 Licences from the Department
The Department hereby grants the Contributing Organisation the “Department
Licences” (if any) specified in each Statement of Work. By entering into the relevant
Statement of Work, the Department warrants that, to the best of its Relationship
Manager’s knowledge after making reasonable enquiry, each of these licences is
directly or indirectly authorised by the person who is at that time the ultimate owner
of the copyright purportedly being licensed.

6.4 Licences from the Contributing Organisation
The Contributing Organisation hereby grants the Department the “Contributing
Organisation Licences” (if any) specified in each Statement of Work. By entering
into the relevant Statement of Work, the Contributing Organisation warrants that, to
the best of its Relationship Manager’s knowledge after making reasonable enquiry, each of these licences is directly or indirectly authorised by the person who is at that time the ultimate owner of the copyright purportedly being licensed.

6.5 **Third party claims**
Each party will promptly notify the other on becoming aware of any claim by a third party that activities of either party in connection with this agreement are an infringement of that third party’s intellectual property rights (**Third Party Claim**). The Contributing Organisation will co-operate with the Department to resolve any Third Party Claim, including (to the extent permitted by law) allowing the Department to handle all negotiations for settlement, and to control any litigation that may follow.

7 **TERMINATION AND CONSEQUENCES**

7.1 **Termination for convenience**
Either party may at any time terminate this agreement or any Statement of Work, by giving the other party not less than one month’s written notice, in which case from the effective date of termination neither party will have any further obligations or liability under this agreement, subject to clauses 7.2 and 7.3.

7.2 **Effect of termination**
If this agreement or a Statement of Work is terminated, the Department will halt all affected Digitisation on or before the effective date of termination, after which the Department will return all the associated Loaned Microfilms to the Return Point for collection by the Contributing Organisation. The Contributing Organisation will remain liable in accordance with this agreement for its share of Digitisation Costs incurred up to the effective date of termination.

7.3 **Survival**
Termination of this agreement will not affect any obligations or liabilities accrued before the effective date of termination, or any assignments or licences granted under this agreement. Clauses 2.3, 2.4, 3.5, 3.6, 3.7, 4.3, 5, 6, 7, 8 and 9 will continue in force notwithstanding any termination of this agreement.

8 **DISPUTES**

8.1 **Dispute Notice**
In the event of any dispute, controversy or claim arising out of or in connection with this agreement, or in relation to any question regarding its existence, breach, termination or invalidity (in each case, a **Dispute**), either party may give written notice to the other specifying the nature of the Dispute and requesting discussions under this clause 8 (**Dispute Notice**).

8.2 **Discussion by Relationship Managers**
As soon as reasonably practicable following receipt of a Dispute Notice, the Relationship Managers will meet (in person, or by audio or video conference) and endeavour to resolve the Dispute by discussion, negotiation and agreement.
8.3 Escalation to Senior Managers
If the Dispute has not been resolved within 30 days following the issue of a Dispute Notice, then either party may give notice requiring the Dispute to be escalated to the Senior Managers. As soon as reasonably practicable after the issue of that notice, the Senior Managers will meet (in person, or by audio or video conference) and endeavour to resolve the Dispute by discussion, negotiation and agreement.

8.4 Limits on proceedings
A party must not commence any proceedings in connection with a Dispute unless at least 60 days have elapsed since the issue of a corresponding Dispute Notice, and that Party has used reasonable endeavours to comply with this clause 8, provided that nothing in this clause will prevent either Party from seeking urgent interim relief from a court (or other tribunal) of competent jurisdiction.

9 GENERAL

9.1 Further assurances
Each of the parties agrees to execute and deliver any documents, including transfers of title, and provide all co-operation as may reasonably be required by the other party to obtain the full benefit of this agreement according to its true intent.

9.2 Amendments
An amendment to this agreement will not be effective unless made in writing and signed by both parties.

9.3 Assignment
Neither party may assign or transfer any of its contractual rights or obligations under this agreement, except with the other party’s prior written approval. The other party may give or withhold its approval as it sees fit, and subject to whatever conditions it considers appropriate.

9.4 Relationship of parties
No legal partnership, employer-employee, principal-agent or joint venture relationship is created or evidenced by this agreement.

9.5 Governing law
This agreement is to be governed by, and construed in accordance with, the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

9.6 Counterparts
This agreement may be executed in any number of counterparts (including facsimile or scanned and emailed copies). So long as each party has received a counterpart signed by each of the other parties, the counterparts together shall constitute a binding and enforceable agreement.

SIGNATURES

Over page...
Signed for and on behalf of The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Department of Internal Affairs by:

____________________________
Name:
Title:
Date:

Signed for and on behalf of [name of Contributing Organisation] by:

____________________________
Name:
Title:
Date:

[Check with Contributing Organisation whether there are any special signing requirements, e.g. signing under seal.]
## SCHEDULE: FORM OF STATEMENT OF WORK

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>1</strong></td>
<td><strong>Date</strong></td>
</tr>
<tr>
<td><em>insert date of SOW</em></td>
<td></td>
</tr>
<tr>
<td><strong>2</strong></td>
<td><strong>Parties</strong></td>
</tr>
<tr>
<td>The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Department of Internal Affairs (Department)</td>
<td></td>
</tr>
<tr>
<td>[insert full legal name] (Contributing Organisation)</td>
<td></td>
</tr>
<tr>
<td><strong>3</strong></td>
<td><strong>Background</strong></td>
</tr>
<tr>
<td>This Statement of Work is governed by the Master Digitisation Agreement between the Department and the Contributing Organisation dated on or about [date] (Master Agreement).</td>
<td></td>
</tr>
<tr>
<td>In this Statement of Work, words and phrases defined in the Master Agreement have the meanings given in the Master Agreement.</td>
<td></td>
</tr>
<tr>
<td><strong>4</strong></td>
<td><strong>Newspapers</strong></td>
</tr>
<tr>
<td><em>identify newspapers to be digitised, including date range</em></td>
<td></td>
</tr>
<tr>
<td><strong>5</strong></td>
<td><strong>Loaned Microfilms</strong></td>
</tr>
<tr>
<td>Option 1</td>
<td><em>Not applicable. Microfilm copies of the Newspapers are already held by the Department, or can be accessed by the Department without the assistance of the Contributing Organisation.</em></td>
</tr>
<tr>
<td>or Option 2</td>
<td><em>Loaned Microfilms</em></td>
</tr>
<tr>
<td>Contributing Organisation to supply Master Microfilms (or Intermediate Microfilms where available) of all Newspapers</td>
<td></td>
</tr>
<tr>
<td>Collection Point</td>
<td><em>identify where Microfilm will be made available for collection by the Department or its agents</em></td>
</tr>
<tr>
<td>Return Point</td>
<td><em>identify where Microfilm will be handed back into the care of the Contributing Organisation or its agents</em></td>
</tr>
<tr>
<td><strong>6</strong></td>
<td><strong>Timetable</strong></td>
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<tr>
<td><em>insert timetable, or cross-reference to attached timetable</em></td>
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</table>
### 7 Cost Sharing

**Option 1** [The Department will be responsible for 100% of its own Digitisation Costs.]

**or Option 2** [The Contributing Organisation will reimburse the Department for [ ]% of the Digitisation Costs. The Department’s initial estimate of the total Digitisation Costs is NZ$[ ] plus GST (if any).]

**or Option 3** [The Contributing Organisation will reimburse the Department for:
- [ ]% of [the Digitisation Costs for the first [ ] pages Digitised] or [the first $[ ] of Digitisation Costs]; and
- 100% of [the Digitisation Costs for the next [ ] pages Digitised] or [the next $[ ] of Digitisation Costs].

Any further Digitisation Costs will be borne solely by the Department, although once the reimbursement available from the Contributing Organisation has been exhausted, the Department may halt Digitisation at any time (notwithstanding clause 3 of the Master Agreement). The Department’s initial estimate of the total Digitisation Costs is NZ$[ ] plus GST (if any).]

### 8 Intermediate Microfilms

In the case of Intermediate Microfilms created in the course of Digitisation, ownership (but not copyright) will vest in [the Department] or [the Contributing Organisation].

### 9 Data Delivery

[Not applicable] or [The Department will provide the Contributing Organisation with a copy of the Digitised Data and associated Metadata in [specify format] on [specify media], to be delivered [specify period, e.g. quarterly], covering all Newspapers digitised during the preceding [specify period, e.g. quarter].]

### 10 Publication by Department

**Website**

[Not applicable] or [On http://paperspast.natlib.govt.nz, and any successor website controlled by the Department]

**Metadata Service**

[Not applicable] or [The Department’s Digital New Zealand service (www.digitalnz.org), including its website and Application Programming Interface (API).]
11 **Acknowledgment for Contributing Organisation**

<table>
<thead>
<tr>
<th>Option 1</th>
<th>Not applicable</th>
<th>or</th>
</tr>
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<tbody>
<tr>
<td><strong>Option 2</strong></td>
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</tbody>
</table>

**Minimum Period**

[ ] years

**Form of acknowledgment**

This newspaper was digitised in partnership with [insert name of Contributing Organisation].

**Context**

To appear on the “Papers Past” website (or any replacement website controlled by the Department), on each webpage displaying the Digitised Data. Acknowledgment to include hyperlink to webpage nominated by the Contributing Organisation.

12 **IP Overview**

[This section does not grant any rights, but sets out the IP landscape as the parties believe it to be at the time of signing the Statement of Work. Note how this flows through into clause 6.1 of the Master Agreement.]

[The owner of copyright in the Newspapers and their constituent works is [insert name].] or [Copyright in the Newspapers has expired.]

[The [Department] or [Contributing Organisation] holds a valid copyright licence in respect of the Newspapers, granted by [name], on the terms of [the Creative Commons Attribution 3.0 Licence] or [identify other licence terms (with URL if applicable), or cross-refer to terms attached to this SOW].]

[The Department holds all the rights necessary to make copies of the Newspapers, through [identify source of rights].]

[The Contributing Organisation holds all the rights necessary to make copies of the Newspapers, through [identify source of rights].]

[The Department holds all the rights necessary to publish Digitised Data in the manner contemplated in this agreement, through [identify source of rights].]

[The Contributing Organisation holds all the rights necessary to publish Digitised Data in the manner contemplated in this agreement, through [identify source of rights].]

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1 http://creativecommons.org/licenses/by/3.0
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 Ownership of New Copyright</td>
<td>New Copyright (if any) arising on creation of Digitised Data will vest in [the Department] or [the Contributing Organisation] or [name third party]. New Copyright (if any) arising on creation of Metadata will vest in [the Department] or [the Contributing Organisation] or [name third party].</td>
</tr>
<tr>
<td>14 Department Licences</td>
<td>[This section does not cater for the unlikely scenario of the Department acquiring rights in the Newspapers themselves, and then sub-licensing those rights to others. This section assumes that the copyright owner of the Newspapers has been persuaded to grant a Creative Commons or similar licence, which is granted not only to the immediate recipient, but also to all other Recipients downstream. ] Option 1 [Not applicable] or Option 2 [The Department grants the Contributing Organisation a licence of all New Copyright (if any) that the Department may hold, on the terms of [the Creative Commons Attribution 3.0 Licence] or [identify other licence terms (with URL if applicable), or cross-refer to specific terms attached to SOW].]</td>
</tr>
<tr>
<td>15 Contributing Organisation Licences</td>
<td>[This section does not cater for the unlikely scenario of the Contributing Organisation acquiring rights in the Newspapers themselves, and then sub-licensing those rights to others. This section assumes that the copyright owner of the Newspapers has been persuaded to grant a Creative Commons or similar licence, which is granted not only to the immediate recipient, but also to all other recipients downstream. ] Option 1 [Not applicable] or Option 2 [The Contributing Organisation grants the Department a licence of all New Copyright (if any) that the Contributing Party may hold, on the terms of [the Creative Commons Attribution 3.0 Licence] or [identify other licence terms (with URL if applicable), or cross-refer to specific terms attached to SOW].]</td>
</tr>
<tr>
<td>16 Relationship Managers</td>
<td>Department: [name] [address 1] [address 1] [address 1] [email] Contributing Organisation: [name] [address 1] [address 1] [address 1] [email]</td>
</tr>
</tbody>
</table>

2 http://creativecommons.org/licenses/by/3.0
3 http://creativecommons.org/licenses/by/3.0
## SIGNATURES

[Check with Contributing Organisation whether there are any special signing requirements, e.g. signing under seal.]

Signed for and on behalf of The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Department of Internal Affairs by:

____________________________
Name: 
Title: 
Date: 

Signed for and on behalf of [name of Contributing Organisation] by:

___________________________
Name: 
Title: 
Date: 