

# **AGREEMENT**

## **On Digitizing, Storing and Access to Records**

**By and Between**

***The Nuclear Claims Tribunal (NCT)***  
**Republic of the Marshall Islands**

**and**

***Ajuntament de Girona - Arxiu Municipal de Girona***  
**(AMGi), Girona, Spain**

**This Agreement is hereby entered into on this \_\_\_\_\_ day of October 2012 between The Nuclear Claims Tribunal (NCT), Republic of the Marshall Islands (RMI); and The Ajuntament de Girona - Arxiu Municipal de Girona or Municipal Archives of Girona (AMGi), Girona, Spain; hereinafter referred to as the Parties, relating to the digitizing, storing and access of the audio-visual records of the NCT, as defined in the Annex of this protocol.**

**WHEREAS**, the NCT is desirous of preserving all records and material, relating to the discharge of its duties under the *Nuclear Claims Tribunal Act 1987*, in the manner and mode(s) or mediums, that will best preserve the authenticity and reliability of such records and material, and

**WHEREAS**, AMGi covenants that it has the expertise, resources, facilities, and capacity, to archive, such records and material, in modes or mediums that will preserve the 'authenticity' and 'reliability' of such records and material, and unfettered access by the NCT to these records and material;

**Now therefore**, in accordance with the covenants set out above, the Parties agree as follows:

**Section 1: Definitions**

- (a)  
'Authenticity' refers to the persistence over times of the original characteristics of the records with respect to context, structure and content.
- (b)  
'Format' means a technical specification that allows content to be rendered in a defined layout in human accessible form.
- (c)  
'Medium' means a technical material support; for example, a hard disk is a medium.
- (d)  
'Migration' means the technical transformation from an old format to a new format.



(e)

'Protocol' means a written description of what occurs during the performance of a technical process; for example, all events that occur during the migration of files.

(f) 'Records and Material' refers to all documentary materials, regardless of physical form or characteristics, made or received and maintained by the NCT in pursuance of its legal obligations or in the transaction of its business pursuant to the *Nuclear Claims Tribunal Act 1987*. For purposes of this Agreement, the records are audio recordings and video recordings and the digital copies of them. The digitization process generates metadata information in its own right: information about file formats, file sizes, equipment used, standards complied with, etc. While of limited cultural importance, this information is important in the publishing and re-use of material in the future. The digitization metadata will be kept inside the files created during digitization.

(g)

'Reliability' means a record has the ability to serve as reliable evidence.

## **Section 2: Purpose, Nature and Duration of the Agreement**

### ***2.1 Purpose:***

The purpose of this Agreement is to have AMG digitize, securely store and assure access to the NCT, to such records and material. Pursuant to the covenants above, the AMG undertakes to provide these services to NCT on ex-gratia basis.

### ***2.2 Nature of the Agreement***

- (1) This Agreement describes the process of transporting the records from the Marshall Islands to Spain and back to the Marshall Islands.
- (2) This Agreement describes the process of digitizing, migrating, storing, and preserving copies of the records and material of NCT at AMG.

### ***2.3 Validity and termination***

- (1) The Agreement is valid when signed by both Parties.



- (2) Each of the Parties is entitled to terminate this Agreement at any time, subject to written notice given six (6) months in advance.
- (3) If events resulting from force majeure (war, natural disaster, etc.) prevent the execution of this Agreement, each of the Parties may terminate the Agreement from the moment when it becomes impossible to carry it out.
- (4) In case the NCT—or any institution that is a successor to or authorized substitute for NCT—demands the return of all copies held by the AMG, this Agreement describes the process of the definitive return of the records to the Marshall Islands.

### **Section 3: Processes**

#### ***3.1 Transporting records to Spain***

The NCT will be responsible for transporting the records to Girona, Spain, and returning them to the Marshall Islands.

#### ***3.2 Storing the records in Spain***

The AMG will be responsible for secure storage of the records in Girona, Spain.

#### ***3.3 Digitization and migration of the records in Spain***

The AMG will prepare a protocol for digitizing the records and provide it to the NCT for approval, prior to digitization. The AMG will ensure that current best practices are used in the digitization process.

When the AMG determines that migration of the records is necessary to preserve their accessibility, the AMG will select a migration path that will ensure that the migrated records will be authentic and reliable. The AMG will inform NCT or its authorized successor one year in advance if additional migration of the records is needed, due to changes in hardware or software systems. The NCT shall review any such proposal and advise AMG accordingly. Where the Tribunal rejects the proposal, the records shall be returned to the RMI or to another predefined place, within a period, not to exceed one year.



### ***3.4 Access to the records in Girona by Legal Representatives and RMI Government Representatives***

The legal representatives of NCT, and or representatives of the Government of the RMI, shall have unfettered access to the NCT records and material maintained by AMG under this agreement, provided that a 30 day notice of any intended visit is served on AMG.

### ***3.5 Access to the Records by NCT***

The NCT shall also have unfettered access to the records held by AMG under this agreement, at any time, in order to guarantee their preservation and long term accessibility.

### ***3.6 Access to the Records by a Third Party***

The NCT may permit access by a third party to the records and material held by AMG under this agreement, for purposes of scientific research or for other reasons deemed acceptable by NCT. Where NCT grants third party access, NCT shall notify AMG of such permission three (3) months in advance of the proposed date of access. The AMG shall be responsible for determining the secure service procedures to be used to fulfil the request.

## **Section 4: Responsibilities of each Party**

### ***4.1 General Responsibilities***

Each Party hereby undertakes with respect to the other Party, reasonable endeavour to promptly perform, and fulfill all of its obligations under this Agreement.

### ***4.2 Responsibilities of the NCT***

To ensure the good faith fulfilment of the provisions of this agreement, the NCT shall be responsible for the following:

- (a) reviewing all AMG proposals for migration of NCT records (see chapter 3.3).
- (b) reviewing all requests by third parties for access to the records. (see chapter 3.4).
- (c) receiving the records after termination of this Agreement.

### ***4.3 Responsibilities of the AMG***



On the other hand, AMGi shall be responsible for:

- (a) digitizing the audio and video records in modes or mediums approved by NCT;
- (b) storing a security copy of the digitized records in AMGi
- (c) treating all information in the records with strict confidentiality.
- (d) migrating the records when needed if necessary, with the prior approval of NCT; (see chapter 3.3).
- (e) delivering customer services to Third Parties, with the prior approval of NCT (see chapter 3.4).
- (f) returning the records to NCT upon termination of this Agreement.

#### **Section 5: Pricing policy**

The AMGi hereby undertakes that it will not charge the NCT for the costs of digitization and preservation of the records under this agreement

The AMGi may however charge full costs, in accordance with the usual fees levied for such service by the AMGi, for access by third parties who have been permitted access by NCT. Such costs may include delivery charges if the Third Party is to receive the records in a physical location other than the premises of the AMGi.

#### **Section 6: Intellectual Property Rights**

The records and material under this agreement remain the property of the NCT. As such, the AMGi does not have the authority to grant access to the records to a Third Party, without the prior written permission of the NCT (see chapters 3.4. and 4.3.).

#### **Section 7: Settlement of Disputes**

In case of controversy arising out of or relating to the present Agreement the Parties agree to undertake all efforts to find an amicable settlement.

#### **Section 8: Language**

This Agreement is drawn up in English. All documents, notices and meetings for the application and/or extension of this Agreement and all other related matters shall also be constituted in English.

**Section 9: Applicable Law and Place of Jurisdiction**

The law applicable to this Agreement shall be the Spanish law. The place of Jurisdiction shall be Girona, Spain

**Section 10: Amendments**

Amendments or changes to this Agreement and its annexes shall be valid only if made in writing and signed by an authorised signatory of each Party.

**Approved as to Legal Form:**

  
\_\_\_\_\_  
Filimon Manoni, Attorney General, RMI  
10 October 2012  
Date


**For NCT:**

  
\_\_\_\_\_  
Bill Graham, Records Preservation Coordinator  
10 OCTOBER 2012  
Date

**For RMI:**

  
\_\_\_\_\_  
Kino Kabua, RMI Secretary of Foreign Affairs  
October 10, 2012  
Date

**For AMGi:**

  
\_\_\_\_\_  
For Ajuntament de Girona - AMGi  
November 2, 2012  
Date

Carles Puigdemont i Casamajó  
Mayor of Girona



## ANNEX

The records consist of 428 audio recordings, on cassettes, made during hearings and other official business of the Nuclear Claims Tribunal.

At the option of the Tribunal, up to 75 video cassettes may be included with the same terms and conditions.