

NARA-The Generations Network

Proposed Digitization Agreement

This non-exclusive Digitization Agreement (the “Agreement”), is entered into as of **INSERT DATE** (the “Effective Date”), by and between The Generations Network, Inc., a Delaware corporation with its principal office at Provo, Utah (“TGN”), and the National Archives and Records Administration, an independent agency in the executive branch of the United States Government with its headquarters in Washington, DC (“NARA”) (with each of TGN and NARA being referred to as a “party” or collectively as the “parties”).

NARA maintains and makes available to the public certain historical records and other documentary materials of the U. S. Government in printed, microfilm, microfiche and other formats (the “Archival Materials”) at its locations throughout the United States (the “NARA Locations”).

TGN is in the business of converting records of historical and genealogical value into digital form, and publishing them on the Internet and on other digital media.

NARA and TGN agree to cooperate in TGN’s digitization of selections of the Archival Materials on the terms and conditions set forth in this Agreement.

Definitions

Archival Materials- the permanently valuable holdings of the National Archives of the United States

Digitized Images – Digital reproductions of selections of the Archival Materials with no associated metadata

Digitized Materials - Digital reproductions of selections of the Archival Materials with associated metadata as will be specifically described in each Project Plan.

Microform publication - microfilm or microfiche of original records and associated descriptive information produced and made available for sale by NARA for preservation of and broader access to original records.

Original record - The version of a document, in any format, that is designated as the official copy for reference and preservation.

Project Plan – a document completed by TGN and NARA that lists the Archival Materials that NARA and TGN have agreed to digitize and provides the details about metadata, equipment, format, costs, personnel and other required information for each selection of Archival Materials. NARA provides the template for Project Plans.

1. Archive Access; Digitizing Services; Database.

1.1 NARA agrees to provide TGN with full access to available subsets of Archival Materials to enable TGN to create digital images of them. The parties will cooperate to determine which of the Archival Materials should be designated for digitization and to develop a strategy for a continuous flow of content for digitization. All projects must be mutually agreed to by both parties. As a result of this cooperative consultation, selections of the Archival Material will be identified to be digitized. The nature, location and details about the digitization process for each selection of Archival Materials will be listed in a Project Plan. The first selection of Archival Materials will be a test project and, upon its mutually satisfactory review, the parties will define and continue to define additional Archival Materials to be digitized and will produce Project Plans for succeeding projects.

1.2 NARA will provide the original Archival Materials for scanning unless a microform publication (microfilm or microfiche) is available. Scanning will be done from microform publications when available and of suitable quality. TGN will produce the Digital Materials at a minimum 300 ppi grayscale for microforms and 300 ppi for original paper records or at such other specifications as the parties may agree in writing in a Project Plan. All use of the Archival Materials must take place at the NARA location set forth in the applicable Project Plan. All details of the on-site scanning or other method of digitization, including but not limited to hours during which TGN may have access to the Archival Materials, will be agreed to between the parties in each Project Plan. To ensure public access to these records, NARA reserves the right to interrupt the project for short periods of time to make copies and otherwise provide reference service to the public.

1.3 TGN will at all times comply with applicable NARA requirements for the handling of the Archival Materials, and NARA will provide training in the proper handling of the Archival Materials. Any digitization equipment to be installed by TGN must be approved by NARA prior to its installation. NARA and TGN will designate points of contact for each location prior to the start of the project. The points of contact will provide guidance and assistance on all the requirements for that particular project.

1.4 (a) Prior to or simultaneously with TGN's initial hosting of the Digitized Materials covered by a Project Plan, or in a timeframe mutually agreed by the parties in a Project Plan, TGN will donate one copy of the Digitized Materials to NARA, with the technical and functional metadata created in accordance with Section 1.6 below (except for the additional TGN proprietary metadata referred to in Section 1.6), in an electronic format that is mutually agreed upon. For a period of five years following the donation, NARA will not sell, make available for downloading, or otherwise provide in electronic form, the entire contents of the Digitized Materials or a major file segment thereof. During this five year period NARA's use of the Digitized Materials will be limited to (i) access by staff and researchers at NARA locations; (ii) production for a fee of digital images of a microform publication or a portion of a series of original records, with a minimum complement of metadata to enable the purchaser to describe, identify, locate, retrieve, and manage the images;

(iii) display of sample images on NARA's website or elsewhere to promote awareness of NARA's services and activities or for noncommercial educational purposes, and (iv) to reproduce portions of the Digitized Images on offline storage devices that are not accessible via Internet such as DVDs or CD-ROMs, with metadata created by NARA only, for sale to the public at rates established by NARA. In the case of (ii) and (iv) above, license restrictions on the materials as issued by NARA will limit their use to prohibit resale, distribution or republication of the Digitized Material in any format or media by the original customer or successive owner of the media.

(b) After five years from the date TGN donates Digitized Materials made from original records, NARA will have full and unrestricted rights to use them, including the right to sell, make available for downloading, or otherwise provide in electronic form, the entire contents of the Digitized Materials or segments of them. Digitized Materials made from microform publications will continue to be made available in accordance with the terms of 1.4 (a), above.

1.5 The Digitized Materials will be hosted by TGN. TGN will provide a direct link from the hosted Digitized Materials to NARA's on-line Archival Research Catalog ("ARC") or any successor to ARC. NARA will provide a direct link from ARC or its successor to an agreed upon page on each TGN site which includes the Digitized Materials. TGN will provide corrections to the Digitized Images or Materials if and when such corrections are made and published by TGN and if such updated materials are requested by NARA.

1.6 NARA and TGN will ensure that sufficient technical and functional metadata is created to meet mutually agreed upon standards. This metadata will enable retrieval of the material at the level of archival control as determined by NARA (e.g., item or file unit level). The nature of this metadata will be agreed upon in the Project Plan. NARA and TGN will be free to use this metadata. TGN may create additional proprietary metadata for its own exclusive use and will not be required to provide this metadata to NARA.

1.7 TGN will develop and maintain a searchable database of the Digitized Materials that will be accessible on the Internet at least at the metadata level specified in 1.6, above. This database will enable access to the digitized versions of the documents that is comparable, at a minimum, to access that is provided to the original documents in NARA's research rooms. TGN will provide free online access to the Digitized Materials in all NARA locations.

2. Obligations.

2.1 Except as specified in this Section 2, all access and services contemplated under this Agreement will be provided free of charge.

2.2 TGN will be responsible for the costs related to:

- a. Conservation and preservation activities (with costs to be estimated and agreed upon in connection with each Project);
- b. Preparing metadata according to agreed upon standards;

- c. Collecting and reshelfing the selected content (with costs to be estimated and agreed upon in connection with each Project);
- d. Digitizing the selected content;
- e. Quality control of the Digitized Materials;
- f. Hosting the content.

2.3 NARA will be responsible for the costs related to:

- a. Training for handling the records;
- b. Initial space, power, lighting, heating and all physical facility requirements;
- c. Follow-up quality assurance of the digitized images and metadata;
- d. Managing the NARA staff involved in each Project;
- e. Providing cost estimates for the activities for which TGN is responsible (2.2(a), and 2.2(c), above)

3. Public Domain; Ownership.

3.1 NARA represents and warrants that to the best of its knowledge: (i) the Archival Materials are in the public domain and (ii) there are no underlying copyright issues related to the dissemination and use of the Archival Materials. Furthermore, NARA is responsible for protecting the privacy of individuals mentioned in its records. Accordingly, NARA represents and warrants that all selections of the Archival Materials will be reviewed for privacy before they are made available to TGN for digitization, and that NARA will only release those Archival Materials that NARA has identified as having no privacy concerns.

3.2 The parties acknowledge that nothing in this Agreement is intended to alter or impair such status, or any rights of control, custody, ownership or use that NARA or the U.S. Government may have in such Archival Materials. NARA shall not transfer control, custody or ownership over any Archival Materials to TGN or any third party. NARA will promptly notify TGN of any claim made by a third party that any of the Archival Materials are covered by copyright or any other intellectual property right. Compliance with copyright laws and observance of the reproduction rights of any third party will be the sole responsibility of TGN. TGN will use its best efforts to identify and exclude from its website any images subject to such restrictions.

3.3 Subject to NARA's underlying ownership rights in the Archival Materials, TGN will own all rights to and have the exclusive and unlimited right to use the Digitized Materials, including without limitation all metadata created for the electronic databases subject only to the limited rights of NARA under Section 1.4 above.

4. Confidentiality

4.1 During the term of this Agreement and thereafter, each party agrees to use its best efforts to maintain the confidentiality of the Confidential Information of the other. Without limiting the generality of the foregoing, each party shall make reasonable efforts to keep, file and store such Confidential Information, together with any notes or other material incorporating or relating to the Confidential Information, in a manner consistent with its confidential nature and to take all appropriate action, whether by instruction, agreement or otherwise, to insure that its trustees, directors, officers and employees do not disclose or use the Confidential Information of the others, directly or indirectly, for any purpose other than the purpose of this Agreement. Notwithstanding the foregoing, either party may disclose Confidential Information required to be disclosed by any requirements of law or any rule or regulation of any governmental authority. NARA agrees that any such disclosure will not, to the extent lawfully permitted, include any Confidential Information. Any required public disclosure by NARA of documents that may contain TGN Confidential Information will be preceded by notice provided to TGN in accordance with NARA regulation and policy, including 36 C.F.R. §§ 1250.26(f), 1250.82 & 1256.52.

4.2 “Confidential Information” shall include, but shall not be limited to, proprietary information, financial information, forecasts or strategies, any of the present or future products, services, designs or styles, trade secrets, inventions, improvements, know-how, processes, customers, employee or agent information, suppliers, methods of operation, marketing or distribution concepts, systems or procedures, or computer programs, of each party. “Confidential Information” shall not include any information known generally to the public (other than as a result of unauthorized disclosure by the other party, its employees, agents or contractors). For the purposes of this Agreement “Confidential Information” does not mean information classified by the United States Government for national security purposes.

4.3 The foregoing confidentiality obligations shall not apply with respect to any information, even if denominated as Confidential Information, to the extent such information: (i) is or becomes publicly known through no wrongful act or omission of the recipient; (ii) was rightfully known by the recipient before receipt from the other; (iii) becomes rightfully known to the recipient without confidential or proprietary restriction from a source other than the disclosing party which does not owe a duty of confidentiality to the disclosing party with respect to such Confidential Information; or (iv) is independently developed by the recipient without the use of, or reference to, the Confidential Information of the discloser. In addition, the recipient may use or disclose Confidential Information to the extent (A) approved by the other in writing in advance of such use or disclosure, or (B) such party is legally compelled to disclose such Confidential Information.

4.4 Neither party will issue any public announcement regarding the existence or content of this Agreement or any project plan without the other party’s prior written approval. Parties agree that this Agreement will be announced for public comment prior to signing.

5. **Limitation of Liability.** In no event shall either party be liable to the other for any incidental, consequential, special, exemplary or other indirect damages, or for lost profits, lost revenues, or loss of business arising out of the subject matter of this Agreement, regardless of the cause of action, even if the party has been advised of the likelihood of damages.

6. **Marks and Other Designations.** NARA agrees that TGN may make reference to NARA and use any NARA trade names, trademarks, service marks, seal, logos or other designations in connection with its activities contemplated under this Agreement, provided that TGN obtain NARA's prior written approval for each usage. Such approval will not be unreasonably delayed or withheld. Absent express written authorization, the use of the NARA trade names, trademarks, service marks, seal, logos or other designations shall not imply or state that NARA or any part thereof, or any NARA official or employee, endorses the policies, activities, products, services or opinions of TGN or any third party.

7. **Notices.** Notices provided under this Agreement will be effective if delivered to the then current principal business address of the other party. The current addresses are:

If to TGN: 360 West 4800 North
 Provo, Utah, 84604
 Attn: Quinton Atkinson

If to NARA: 8601 Adelphi Road
 College Park, MD 20740-6001
 Attn: Deputy Archivist, ND

Notices may be given by mail (effective three business days after mailing) or by express courier (effective on actual delivery).

8. **Term; Termination; Survival.** This Agreement is effective as of the Effective Date and will remain in effect for a period of five years or one year after the completion date of any Project defined in a Project Plan, whichever is longer, unless terminated sooner by either party by providing ninety (90) days prior written notice. If a ninety day termination notice is given by NARA for other than cause, the termination will not be effective as to any Project Plan in process until the project described therein is completed unless completion is prevented by any requirements of law or any rule or regulation of any governmental authority. The provisions of Sections 1.4, 2, 3, 4 and 5 shall survive termination of this Agreement for any reason.

9. **Choice of Law.** This Agreement shall be governed by and in accordance with the laws of the United States. In the event federal law does not address an issue, the applicable law shall be Utah law without application of conflict of laws provisions

10. **Relationship of the Parties.** This Agreement does not constitute, and is not intended to give rise to, a partnership or joint venture between the parties. Each party will operate under the terms of this Agreement as an independent entity and not as an agent for, or an employee of, the other.

11. Assignment. Neither NARA nor TGN may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, except that TGN may assign (a) this Agreement or (b) any of its rights and obligations under this Agreement, both without NARA's consent to any of its Affiliates or to the purchaser of all or substantially all of the assets to which this Agreement pertains or its stock, through merger, consolidation or otherwise; provided, however, that if the assignee of this Agreement pursuant to this subsection 11.2(b) is not an existing affiliate of TGN in the ninety days immediately prior to the transaction resulting in the assignment hereof, TGN shall, within thirty days of such transaction, give notice of such assignment to NARA, and NARA will have the right, within thirty days of receipt of such notice from TGN, to provide thirty days' written notice to TGN of termination of this Agreement. NARA will not unreasonably terminate the Agreement. If NARA does not provide such notice within such thirty-day period, then this termination right shall expire and be of no further force or effect. Subject to the foregoing limitation, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

12. Entire Agreement; Modification. This Agreement is the entire agreement of the parties regarding the subject matter set forth herein, provided that nothing in this Agreement will limit any other rights of TGN to access the Archival Materials. The parties agree that any modifications to this Agreement will be made only in writing duly executed by the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the Effective Date.

**NATIONAL ARCHIVES AND
RECORDS ADMINISTRATION**

TGN, INC.

By:_____

By:_____

Name: Allen Weinstein

Name:

Title: Archivist of the United

Title:

States

Date:

Date: