

NARA-iArchives Digitization Agreement

This non-exclusive Digitization Agreement (the "Agreement"), is entered into as of January 10, 2007 (the "Effective Date"), by and between iArchives, Inc., a Utah corporation with its principal office at Lindon, Utah ("iArchives"), 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 iArchives and NARA being referred to as a "party" or collectively as the "parties").

WHEREAS

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");

iArchives has expertise in creating digital images of such materials and creating and maintaining searchable electronic databases of such images; and

NARA and iArchives agree to engage in the creation of digital images of selections of the Archival Materials (the "Digitized Materials") on the terms and conditions set forth in this Agreement.

1. Archive Access; Digitizing Services; Database.

1.1 NARA agrees to provide iArchives with full access to the available Archival Materials to enable iArchives to create digital images of selections of them. Although NARA retains the final decision on what materials are appropriate for digitization, 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. After consulting with NARA on the availability of Archival Materials, iArchives will submit a project plan at least annually that will identify the Archival Materials proposed for digitization. NARA must agree to the proposal prior to implementation.

1.2 NARA will provide the Archival Materials in either microfilm or paper format as the parties agree. iArchives will produce the Digitized Materials at 300 ppi grayscale for microfilm and microfiche and at 400 ppi grayscale for paper, or at such other specifications as the parties may agree in writing. For paper materials provided by NARA, iArchives will install a digitization station at the NARA Locations. Such on-site scanning may be performed between 8:45 AM and noon and 1:00 PM and 5:00 PM, Monday through Friday, or subject to such other opening times as may be in effect at the NARA Locations. 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 iArchives 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 iArchives must be approved

by NARA prior to installation. NARA will designate a point of contact for each location in which a digitization project is ongoing. The NARA point of contact will provide guidance and assistance on all the requirements for that particular project.

1.4 On a quarterly basis, or in a timeframe mutually agreed by the parties in a project plan, iArchives will donate one copy of the Digitized Materials to NARA, with all associated metadata (except for the additional iArchives proprietary metadata referred to in Section 1.6 below), in an electronic format specified by NARA. NARA shall use these copies only for the following purposes: (i) for archival purposes by staff and in NARA's research rooms; (ii) to produce selected copies for researchers, for which NARA may charge a fee; (iii) to reproduce portions of the Digitized Materials 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; and (iv) to display sample images on NARA's website or elsewhere to promote awareness of NARA's services and activities or for noncommercial educational purposes. NARA will not sell or otherwise make available for downloading the entire contents of the Digitized Materials or a major file segment thereof. After five years from the date iArchives donates any Digitized Materials as referenced above in this section, NARA shall have full and unrestricted rights to use the Digitized Materials on websites operated by or for NARA. Should iArchives cease to exist, NARA shall immediately: (A) receive a copy of Digitized Materials not previously provided to NARA (iArchives shall make all reasonable efforts to deliver this copy to NARA before it ceases to exist); and (B) have full and unrestricted rights to use the Digitized Materials. Should iArchives cease to host any Digitized Materials on its website (see Sections 1.5 and 1.7, below), NARA shall immediately: (A) receive a copy of Digitized Materials not previously provided to NARA; and (B) have full and unrestricted rights to use those Digitized Materials no longer hosted by iArchives.

1.5 The Digitized Materials will be hosted by iArchives. iArchives will provide a direct link from the hosted Digitized Materials to NARA's on-line Archival Research Catalog ("ARC"). NARA will provide a direct link from ARC to the hosted Digitized Materials.

1.6 NARA and iArchives will ensure that sufficient technical and functional metadata is created according to NARA standards. This metadata will enable retrieval of the material at the fundamental 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 iArchives will be free to use this metadata. iArchives may create additional proprietary metadata (i.e., user contributed metadata) for its own exclusive use and will not be required to provide this metadata to NARA.

1.7 iArchives will develop and maintain a searchable electronic database of all of the Digitized Materials that will be accessible on the Internet via its "Footnote" website (or Footnote's successor). iArchives will provide free subscription service to the Footnote website to all persons who are at NARA Locations. NARA will determine which features of the subscription service will be available at 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 iArchives will be responsible for the costs related to:

- a. Conservation and preservation activities
- b. Preparing metadata according to agreed upon standards
- c. Collecting and reshelving the selected content
- d. Digitizing the selected content
- e. Quality control of the digitization
- f. Hosting the content
- g. Shipping and handling of microfilm and sheets of microfiche.

NARA will be responsible for the costs related to:

- a. Training for handling the records
- b. Initial space requirements
- c. Follow-up quality assurance of the digitized images and metadata
- d. Managing the NARA staff and project

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 reviews its records for privacy before such records are made available to the public whenever NARA believes there is a privacy concern and only releases records for which NARA has identified that there are no privacy concerns. NARA represents and warrants that all selections of Archival Materials will undergo such review before NARA provides them to iArchives for Digitization.

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 iArchives or any third party. NARA will promptly notify iArchives 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 iArchives. iArchives will use its best efforts to identify and exclude from the Footnote website any images subject to such restrictions.

3.3 iArchives will own all rights to and have the exclusive and unlimited right to use the Digitized Materials and the Footnote website, including without limitation all metadata created for the electronic database, 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 iArchives Confidential Information will be preceded by notice provided to iArchives in accordance with NARA regulation and policy, including 36 C.F.R. §§ 1250.26(f), 1250.82 & 1256.52 (2004).

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.

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 iArchives 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 iArchives obtain NARA's prior written approval for each usage. 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 iArchives 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 iArchives: 520 West 355 South, Suite 175
Lindon, Utah 84042
Attn: Russell W. Wilding

If to NARA: 8601 Adelphi Road
College Park, MD 20740-6001
Attn: Lewis Bellardo, 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, unless terminated sooner by either party by providing ninety (90) days prior written notice. This Agreement shall automatically renew for additional one-year terms unless either party gives at least ninety (90) days written notice prior to the end of the current term of its intent not to renew. 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 state 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. Except as otherwise provided in this Section 11, neither party may assign or transfer this Agreement or any part hereof to any third party without the written consent of the other party. Each party, upon ninety (90) days prior written notice to the other party, may assign this Agreement or sublicense or transfer all or a portion of its rights under this Agreement to any

of its affiliates, or designate or cause any affiliate to have the benefit of all or a portion of its rights hereunder; provided, however, that any such party shall remain liable for the performance by its affiliate of the obligations of the affiliate under this Agreement. Any attempted assignment, delegation or transfer in derogation hereof shall be null and void.

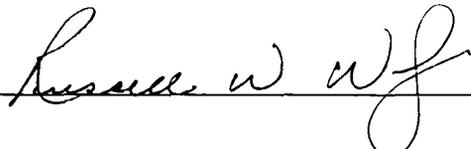
12. Entire Agreement; Modification. This Agreement is the entire agreement of the parties regarding the subject matter set forth herein, provided that nothing in this Agreement will limit any other rights of iArchives to access the Archival Materials. The parties agree that any modifications to this 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**

iARCHIVES, INC.

By: 

By: 

Name: Allen Weinstein

Name: Russell W. Wilding

Title: Archivist of the United States

Title: Chief Executive Officer

Date: January 10, 2007

Date: January 10, 2007