

APPLE INC.

ITUNES U CONTENT/SERVICES AGREEMENT – PUBLIC CONTENT

This Content/Services Agreement (the “Agreement”), is made and entered into by and between Apple, Inc., a corporation organized under the laws of the State of California with offices at 1 Infinite Loop, Cupertino, CA 95014 (“Apple”), and the organization or entity accepting the terms and conditions of this Agreement (“Content Provider”).

WHEREAS, Apple runs a service called "iTunes U", a section of the iTunes Store, to enable Content Provider to make educational materials and other content available via Apple's iTunes software to members of the general public solely for the educational uses;

WHEREAS, Apple provides pre-designed templates and administrative tools to enable Content Provider to have its own Content Provider-branded site for browsing, searching, downloading, and uploading Content (as defined below);

WHEREAS, the parties desire that Apple operate the iTunes U Site (as defined below) on the terms and conditions set forth herein; and

WHEREAS, the parties desire that Content Provider grant a license or sublicense to Apple to use and distribute Content on the iTunes U Site.

NOW, THEREFORE, in consideration of the mutual promises and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

1.1 “**Apple Tools**” mean any guidelines, templates, APIs (application programming interfaces), software, documentation or other tools provided by Apple to assist or enable Content Provider to implement its own Content Provider-branded site for iTunes U.

1.2 “**Artwork**” means any Content Provider-supplied images associated with its site that uniquely identifies the site or sections of the site, or any artwork associated with a collection of content within a site.

1.3 “**Content**” means the audio, visual, textual, graphical, or other materials provided or posted by Content Provider for use on the iTunes U Site and/or the iTunes Store. Content shall be hosted on Content Provider’s servers.

1.4 “**Information**” means all non-public information, customer and product information, procedures, systems, or data provided by the other party in connection with this Agreement.

1.5 “**iTunes Store**” means an online digital content download service owned and/or controlled by Apple or an affiliate of Apple, which is currently branded as the “iTunes Store.”

1.6 “**iTunes U Site**” means the specific area of the iTunes Store dedicated to Content Provider and containing the pages, sub-pages and content required to deliver the user interface within iTunes and to provide access to the Content, including all web pages and sub pages.

1.7 “**Marks**” mean Content Provider trademarks, service marks, logos and trade names.

1.8 “**Public Content**” means the Content made available to the general public.

1.9 “**Content Provider Website**” means the web page(s) on the Content Provider’s website that provides access to the iTunes U Site. The Content Provider Website’s presentation of access to the iTunes U Site shall be subject to Apple approval, which shall not be unreasonably withheld.

2. LICENSE GRANTS.

2.1 **Content.** Content Provider hereby grants to Apple a nonexclusive, royalty-free right and license to use, reproduce, modify the format and display of Artwork and/or Public Content (not the substance of any Public Content), distribute, transmit, perform and display Artwork and/or Public Content on the iTunes U Site and Public Content on the iTunes Store throughout the world, in whole or in part, by any means now known or hereafter developed (such as, but not limited to, websites and electronic downloads), for the purposes consistent with this Agreement. In order to ensure the high-quality delivery of Public Content to end-users, Content Provider agrees that Apple may (but is not required to) store Public Content on Apple's servers and consents to such storage. For the avoidance of doubt,

Apple shall not charge the user for the download of any Public Content made available on the iTunes U Site or the iTunes Store pursuant to this Agreement.

2.2 Online Marketing. Apple shall have the royalty-free right to use, reproduce, distribute and display the Public Content throughout the world, by any means now known or hereafter developed, for promotional and marketing purposes to demonstrate the iTunes U Site and Apple technology (i) on the iTunes U section of the iTunes Store and (ii) other areas of the iTunes Store or Apple websites, including, but not limited to, creating reformatted graphical banners that link to Content Provider's Public Content.

2.3 Other Marketing. Without limiting Section 2.2, Apple shall have the royalty-free right to use, reproduce, distribute and display the Public Content throughout the world, by any means now known or hereafter developed, for promotional and marketing purposes to demonstrate the iTunes U Site and Apple technology subject to Content Provider's written approval (in the form of a confirming email), not to be unreasonably withheld or delayed, in Apple marketing collateral, at Apple sponsored venues and events, and for any other similar lawful purpose.

2.4 Apple Tools. To the extent that Apple provides Content Provider with Apple Tools, Apple hereby grants Content Provider a nonexclusive, royalty-free, non-transferable right and license during the term of this Agreement to internally use, reproduce and distribute the Apple Tools within Content Provider for the sole purpose of implementing a Content Provider-branded site for iTunes U; provided, however, that if an Apple Tool is accompanied by its own set of licensing terms (e.g. sample code license), then those specific licensing terms shall govern Content Provider's use of that Apple Tool.

2.5 Ownership Rights. As between the parties, Content Provider will be responsible, with Apple's assistance through providing guidelines and templates, for the design of the iTunes U Site. Content Provider shall follow Apple's guidelines and templates in the design of the iTunes U Site. In the event Content Provider does not comply with such guidelines and templates, Apple may request Content Provider make any necessary changes. Content Provider must comply with such requested changes within fifteen (15) days. Except for Content Provider's or third party pre-existing rights in uploaded Public Content, Apple retains all ownership rights, title and interest in and to the Apple Tools, the iTunes U Site and the iTunes Store, including without limitation all graphical designs, names, icons, user interfaces and other design elements, and the selection, ordering and arrangement of materials therein and the "look and feel" thereof.

3. SPECIAL TERMS.

3.1 Providing Access to Public Content Through the iTunes U Site. Content Provider shall be responsible for uploading Artwork and making Public Content available (e.g., via RSS feeds and links) through the iTunes U site. Content Provider shall be responsible for obtaining all necessary third party permissions or licenses for the Artwork or Public Content to the extent Content Provider does not own the Artwork or Public Content in question. Content Provider shall provide access to Public Content, and update Public Content, as reasonably necessary. Apple shall have the right to remove access to Public Content hosted by Content Provider, at any time, in its sole discretion (e.g. for reasons including, but not limited to, copyright infringement claims, content files causing distribution of viruses, etc.) without notice or liability. Apple has the right, but not the obligation, to monitor any Artwork or Public Content made available by Content Provider, to investigate any reported or apparent violation of this Agreement, and to take any action that Apple in its sole discretion deems appropriate, including, without limitation, under Section 8 below or under Apple's Copyright Policy (<http://www.apple.com/legal/trademark/claimsofcopyright.html>). In the event that Apple removes any Artwork or Public Content, it shall use its commercially reasonable efforts to notify the Content Provider via email within ten (10) days of doing so. Apple shall have the right to revise or update the look and feel of the iTunes U Site from time to time, in its sole discretion.

3.2 Maintenance. Apple shall from time to time be required to perform maintenance on the iTunes U Site. Apple is not required to notify Content Provider of either scheduled or unscheduled maintenance, however, Apple shall use commercially reasonable efforts to notify Content Provider via email in advance of any unscheduled or emergency maintenance.

4. TRADEMARKS AND TRADE NAMES.

4.1 License from Content Provider. During the term of this Agreement, Content Provider grants to Apple the right to use the Marks, solely in connection with the exercise of Apple's rights under Sections 2.1, 2.2 and 2.3 and subject to any guidelines that Content Provider may furnish to Apple.

4.2 License from Apple. During the term of this Agreement, and subject to the Apple Trademark Guidelines which may be found at www.apple.com/legal/trademark/guidelinesfor3rdparties.html as may be amended from time to time, Apple grants Content Provider a non-exclusive, nontransferable, non-sublicenseable, revocable, royalty-free license to use and display the iTunes Web Badge on the Content Provider Website in connection with the marketing of the iTunes U Site, provided that any use or display of the iTunes Web Badge must be pre-approved in writing by Apple.

5. REPRESENTATIONS AND WARRANTIES; INDEMNITY.

5.1 Representations and Warranties.

(a) Content Provider represents and warrants that: (i) it has the full power and authority to enter into this Agreement and to grant Apple the rights granted herein; and (ii) it has complied and shall continue to comply with all legislation, rules and regulations regarding the Artwork and Content. Content Provider further represents and warrants that to the best of its knowledge: (i) it is the sole owner of the Artwork and Content or has been otherwise authorized by the owner of the Artwork and Content to use the Artwork and Content as contemplated herein, and has secured all necessary licenses, consents and authorizations with respect to use of the Artwork and Content and all elements thereof to the full extent contemplated herein; and (ii) no part of the Artwork or Content violates or infringes upon the patent rights, copyrights, trade secrets, trademarks or constitutes defamation, invasion of privacy, or the violation of any right of publicity or other rights of any person or entity.

(b) THE APPLE TOOLS, ITUNES U SITE, ITUNES STORE AND ALL PRODUCTS AND SERVICES PROVIDED BY APPLE PURSUANT TO THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS. APPLE DISCLAIMS, AND CONTENT PROVIDER HEREBY WAIVES, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. APPLE MAKES NO REPRESENTATIONS OR WARRANTIES IN CONNECTION WITH (I) THE SECURITY OF OR ACCESSIBILITY TO THE ITUNES U SITE OR ITUNES STORE; (II) THE SECURITY OF OR ACCESS TO PUBLIC CONTENT; OR (III) THE USE OR INABILITY TO USE THE APPLE TOOLS. Apple shall not be responsible for providing any digital rights management (DRM) solutions or any other protection for Public Content. Apple shall not be responsible for providing any technical or customer support.

5.2 Indemnity. To the extent permitted by law, Content Provider shall indemnify, defend and hold harmless Apple and Apple's parents, subsidiaries, affiliates, and their directors, officers, employees, agents, subcontractors and sublicensees, from and against all claims, actions, liabilities, losses, expenses, damages and costs, including, but not limited to, reasonable attorneys' fees, that may at any time be incurred by reason of: (i) any claim arising out of any breach or alleged breach of Content Provider's representations or warranties contained in this Agreement, except where the claim results directly from Apple's or this Agreement's specific direction to Content Provider; (ii) any claim in connection with the Artwork or Content, including but not limited to claims of alleged infringement by, or errors, omissions or misrepresentations in, the Artwork or Content; or (iii) any virus, worm, Trojan horse or other contaminating or destructive feature contained in the Content.

6. CONFIDENTIALITY AND NON-DISCLOSURE.

To the extent permitted by law, the parties each agree to treat all Information as confidential and proprietary information. The obligations with respect to Information shall not apply to Information (i) that is independently developed by the party receiving Information, or which is lawfully received free of restriction from another source having the right to so furnish such Information; (ii) after it has generally become available to the public without breach of this Agreement or other wrongful action or omission by the other party; (iii) which at the time of disclosure was known to the disclosing party to be free of restriction, as evidenced by documentation in its possession; (iv) which the party who has disclosed Information to the other party agrees in writing to be free of such restrictions; or (v) which is required by law or court order to be disclosed, provided that the receiving party make reasonable efforts to give the disclosing party notice of such requirement prior to any such disclosure and take reasonable steps to obtain protective treatment of the Information.

7. LIMITATION OF LIABILITY.

EXCEPT IN CONNECTION WITH INDEMNITY OBLIGATIONS PURSUANT TO SECTION 5.2, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS, LOST BUSINESS OPPORTUNITY, LOST DATA, INTERRUPTION OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, OR FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY (INCLUDING BUT NOT LIMITED TO APPLE'S MODIFICATION OR DESTRUCTION OF PUBLIC CONTENT), AND, TO THE EXTENT PERMITTED BY LAW, APPLE'S ENTIRE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND CONTENT PROVIDER'S USE OF THE ITUNES U SITE SHALL BE LIMITED TO FIFTY DOLLARS (\$50.00). THE LIMITS SET FORTH IN THIS SECTION WILL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION OF LIABILITY IN SECTION 7 DOES NOT APPLY TO PERSONAL INJURY OR TANGIBLE PROPERTY DAMAGE.

8. TERM, RENEWAL AND TERMINATION.

8.1 Term and Termination. The initial term of this Agreement shall commence upon the date Apple approves this Agreement for a period of one (1) year. Thereafter, this Agreement will automatically renew for one (1) year terms until either party terminates (for any reason, including for convenience). Each party may terminate this Agreement for any reason (including for convenience) upon thirty (30) days prior written notice. In the event of a party's material breach of this Agreement, the other party may terminate upon fifteen (15) days prior written notice.

8.2 Effect of Termination. Upon the expiration or termination of this Agreement, each party shall promptly return all information, documents, manuals and other materials belonging to the other party except as otherwise provided in this Agreement. Notwithstanding anything to the contrary, Apple shall not be required to destroy any marketing collateral (if any) or any other product that contains any Content or Artwork and shall be allowed to exhaust any such remaining collateral or product within its ordinary course of business. Sections 1, 2.5, 5, 6, 7, 8.2, and 9 shall survive the expiration, termination or cancellation of this Agreement.

9. GENERAL PROVISIONS.

9.1 Nonassignment/Binding Agreement. Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Content Provider, in whole or in part, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Apple, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

9.2 Taxes. Content Provider, except when tax exempted, will pay all taxes and duties, if any, payable based on its use of the iTunes U Site and any services provided by Apple under this Agreement. Proof of Content Provider's tax exempt status must be on file at Apple.

9.3 Independent Contractors. The relationship of the parties under this Agreement is that of independent contractors. Neither party will be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other.

9.4 Notices. Except as otherwise provided in this Agreement, any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by U.S. Postal Service, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth in the preamble or signature line to this Agreement and with a courtesy copy sent via email to itunes-u-notices@apple.com. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

9.5 Force Majeure. Neither party will be liable to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire and explosions, but the inability to meet financial obligations is expressly excluded.

9.6 Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

9.7 Severability. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

9.8 Integration. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. This Agreement may not be amended, except by a writing signed by both parties.

9.9 **Press Release.** Content Provider shall not make or issue any public statement or press release regarding this Agreement or its subject matter without Apple's prior written approval.

9.10 **Counterparts.** This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

9.11 **Governing Law.** This Agreement will be interpreted and construed under the laws of the State of California, as applied to agreements entered into and to be performed entirely within California between California residents. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, and Content Provider hereby consents to personal jurisdiction in those courts. Notwithstanding the foregoing, if Content Provider is a governmental or public educational institution, then this Agreement will be interpreted and construed in accordance with the laws of the state and territories (within the U.S.) in which such institution is domiciled, without giving regard to conflict of laws provisions.

9.12 **Application of Local Law.** Notwithstanding anything to the contrary provided or implied in this Agreement, nothing in this Agreement shall (i) render inapplicable to this Agreement any contractual term or provision of law that the jurisdiction in which Content Provider is domiciled requires to be imposed as a matter of law on agreements of the nature of this Agreement; (ii) deprive Content Provider of any remedy that the laws of its domicile jurisdiction require to be available to Content Provider with respect to agreements of the nature of this Agreement; or (iii) impose on Content Provider any liability that the laws of its domicile jurisdiction prohibit with respect to agreements of the nature of this Agreement.

9.13 **Signature Authorization.** The person accepting this Agreement represents and warrants that (i) he or she has authority to contractually bind his or her organization to the terms and conditions of this Agreement; and (ii) Content Provider's by-laws or policies do not prohibit the acceptance and execution of terms and conditions in electronic form.

CONTENT PROVIDER INFORMATION

Name of Content Provider: National Archives and Records Administration

Content Provider Address: _____

8601 Adelphi Road

Room 3202

College Park, MD 20740 USA

Authorized Representative's Name: Michael Wash

Title: Executive for Information Services

Phone Number: 301-837-1992

Email Address: michael.wash@nara.gov

___ By checking this box, I certify I am authorized to submit this application on behalf of said Content Provider. I have read and accept the terms and conditions of this Agreement and acknowledge this will be accepted as my signature in lieu of a written signature with full force and effect.

Agreed to on: _____

Agreed to from IP Address: _____