

**Digitization Agreement**  
**Genealogical Society of Utah and the National Archives and Records Administration**

**Agreement**

This non-exclusive digitization Agreement (the "Agreement"), is entered into as of October 23, 2007 (the "Effective Date"), by and between Genealogical Society of Utah (d/b/a FamilySearch), a Utah corporation with its principal office at Salt Lake City, Utah ("GSU"), 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 GSU 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");

GSU has expertise in creating digital images of such materials ("Digitized Images"); creating technical and functional metadata associated with the Digitized Images ("Metadata," further defined in Section 1.6 below); placing the Digitized Images and Metadata together in context ("Digitized Materials"), and creating and maintaining searchable electronic databases of the Digitized Materials ("Databases"); and

NARA and GSU each wish to facilitate the creation of Digital Materials from selections of the Archival Materials on the terms and conditions set forth in this Agreement.

**1. Archives Access; Digitizing Services; Database.**

1.1 NARA agrees to provide GSU with full access to the available Archival Materials to enable GSU to create Digitized Images of selections of them. Access shall be provided to specific materials based upon Project Plans that shall be agreed to by both parties. 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 as set forth in the Project Plans.

1.2 NARA will provide the Archival Materials in either microfilm or paper format as the parties agree. GSU will produce the Digitized Images at 300 ppi grayscale for textual materials or at such other specifications as the parties may agree in a Project Plan. GSU shall provide digital scanning systems at NARA locations for any Archival Materials to be digitally scanned. On-site scanning by GSU 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 GSU 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 GSU must be approved by NARA prior to installation. NARA and GSU 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, GSU will donate one copy of the Digitized Materials (the Digitized Images with associated metadata) to NARA in an electronic format specified by NARA. With respect to public access, if no language in a Project Plan grants a license to a third party to the Digitized Materials contemplated within that Project Plan, then GSU hereby grants to NARA a perpetual, royalty free, worldwide license to the Digitized Materials that are the subject of such Project Plan (the "Default License"). For the avoidance of doubt, and unless limited by Section 1.5 below, the Default License shall permit NARA, at its discretion, to sell or otherwise make available the Digitized Materials for individual, personal use. For a period of five years after the donation of the Digitized Materials, NARA will not sell or otherwise make available for downloading the Digitized Materials related to that Project Plan for commercial purposes. During this five year period NARA will post notices in all research rooms that provide access to the Digitized Materials indicating this commercial use limitation. NARA also will not provide for the systematic reproduction or distribution of the Digitized Materials via the Internet or any other means without the prior written consent of GSU. After five years from the date GSU donates any Digitized Materials, NARA will have full and unrestricted rights to use them.

1.5 GSU will host the Digitized Materials on a publicly available Web site. GSU 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 located on the Web site operated by or for GSU. GSU may require registration by users in order to access the Web site and the Digitized Materials hosted thereof. Digitized Materials hosted on the GSU Website will be available at no cost ("Default Free Public Access"). Although the intent of this Agreement is to provide access at no cost to the public, in extenuating circumstances GSU may enter into third party agreements to recover GSU's costs for digitizing and indexing selected materials related to that Project Plan. Such costs will be mutually agreed to by GSU and NARA. During this "Cost Recovery Period," the third party may charge for access to the selected materials on its hosted website. During the Cost Recovery Period the hosted Digitized Materials

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will be available free of charge in NARA research rooms and from NARA staff terminals. In addition, NARA may use the copies of the selected Digitized Materials provided by GSU (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. During the Cost Recovery Period, NARA will not sell or otherwise make available for downloading the entire contents of the Digitized Materials or a major file segment thereof. After the Cost Recovery Period is over, a period not to exceed five years from the date the Digitized Materials are donated to NARA, NARA will have the rights specified in Section 1.4, above.

1.6 NARA and GSU will ensure that sufficient technical and functional metadata (the "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 GSU will be free to use this Metadata.

## 2. Obligations.

2.1 GSU 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 Digitized Materials for Internet access
- g. Shipping and handling of microfilm and sheets of microfiche.

2.2 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
- e. Hosting the Digitized Materials for Internet access, if NARA chooses to host them.

### **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 Archival Materials will be reviewed for privacy before they are provided to GSU for Digitization, and that NARA will only release those Archival Materials for which NARA has identified there are 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 GSU or any third party. NARA will promptly notify GSU 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 GSU. GSU will use its best efforts to identify and exclude from the GSU's publicly available website any images subject to such restrictions.

3.3 The parties acknowledge that GSU will own all copyright and other intellectual property rights to the Metadata, subject to the license granted to NARA under Sections 1.4 and 1.5, above.

3.4 Because of the value of the Archival Materials to members of the public, the parties agree that there shall be no restrictions on use of the Digital Images by any members of the public. NARA acknowledges that the foregoing lack of restrictions on members of the public does not (i) diminish the obligations of NARA in Sections 1.4 and 1.5 to prevent large-scale commercial exploitation of the Digital Images during the Cost Recovery Period; or (ii) transfer any of GSU's rights to the Metadata.

### **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 reasonable, 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 GSU Confidential Information will be preceded by notice provided to GSU 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 financial information; product or marketing plans, forecasts, or strategies; trade secrets; personal information of employees, volunteers, vendors, and agents; and other information marked as "Confidential" or with a similar legend. "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, nor refer to the other party as a partner or customer, without the other party's prior written approval of such publicity, advertising, or other public communication.

**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.** Each party agrees that it shall not make reference to any of the other party's trade names, trademarks, service marks, seal, logos or other designations in connection with its activities contemplated under this Agreement without prior written approval for each usage. Unless such prior written approval expressly authorizes otherwise, the use of a party's trade names, trademarks, service

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marks, seal, logos or other designations shall not imply or state that the party or any part thereof, or any official or employee, endorses the policies, activities, products, services or opinions of the other party 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 GSU:

50 E. South Temple Street, Suite 500

Salt Lake City, Utah 84105

Attn: Alan Heath

If to NARA:

8601 Adelphi Road

College Park, MD 20740-6001

Attn: James Hastings

Notices shall be given by recognized express courier and shall be effective as of actual delivery as evidenced by signature of the receiving party's employee or agent.

**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 as set forth below. 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. Either party may terminate this Agreement for any reason upon providing to the other sixty (60) days written notice.

**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.** When expressly provided for in a Project Plan to which NARA has agreed, GSU shall have the right to subcontract one or more of its responsibilities hereunder solely in relation to the Archival Materials set forth in that Project Plan. 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 GSU 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.

**For the NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:**

By: Allen Wanda

Title: Archivist of the United States

Date: 10/23/07

**For the GENEALOGICAL SOCIETY OF UTAH:**

By: [Signature]

Title: Vice President

Date: 23/10/07