

DISTRIBUTION SERVICES AGREEMENT

This nonexclusive Distribution Services Agreement (this "**Agreement**"), effective as of July 1, 2007 (the "**Effective Date**"), is made by and between On-Demand Publishing LLC, a Delaware limited liability company doing business as CustomFlix Labs and a wholly owned subsidiary of Amazon.com, Inc., with offices located at 100 Enterprise Way, Suite A-200, Scotts Valley, CA 95066 ("**CustomFlix**"); the National Archives and Records Administration, an independent agency in the executive branch of the federal government, with offices located at 8601 Adelphi Road, College Park, MD 20740-6001 ("**NARA**"); and the National Archives Trust Fund ("**Trust Fund**"), an organization affiliated with NARA that, among other purposes, is authorized to enter into royalty agreements relating to the marketing and sale of images from NARA's holdings. Unless otherwise specified herein, "**NARA**" shall mean NARA and the Trust Fund individually and collectively.

NARA wishes to authorize CustomFlix and its Affiliates to produce Products from certain Content (as defined below) on behalf of NARA for distribution, listing and sale by Amazon in physical, streaming, and digitally downloadable form for sale to prospective or actual purchasers ("**Customers**") ordering through CustomFlix's and its Affiliates' online sales channels as further specified herein. The parties hereby agree as follows:

1. Definitions

"**Affiliate**" means any entity that controls, is controlled by or is under common control with CustomFlix (which includes Amazon.com, Inc. and its Affiliates).

"**Amazon Logo**" means the Amazon.com logo and any other logos or trademarks provided by CustomFlix or an Affiliate to NARA for use in connection with this Agreement.

"**Amazon Properties**" means (i) any web site or other online point of presence owned or operated by or on behalf of CustomFlix or any of its Affiliates worldwide (including but not limited to, the Amazon Site), and (ii) any other web site, other online point of presence, on any platform through which any products or services available on or through any of them are described, syndicated, offered, merchandised, or advertised.

"**Amazon Site**" means that web site, the primary home page of which is identified by the URL www.amazon.com (and any successor or replacement web site) and also includes any other web sites maintained by or for CustomFlix or its Affiliates (including those web sites the respective home pages of which are identified by the URLs www.A9.com, www.amazon.co.uk, www.amazon.fr, www.amazon.co.jp, www.amazon.ca, www.amazon.de, www.IMDb.com, and www.customflix.com).

"**Archival Content**" means historical records and other documentary materials maintained by NARA in the National Archives of the United States and to be provided by NARA to CustomFlix or an Affiliate under this Agreement, which will include Video Content, Audio Content, Product Materials, and associated materials.

"**Audio Content**" means Content that is provided by NARA in audio format such as on audiotape or CD, and in digitized or any other formats.

"**Confidential Information**" has the meaning ascribed to it in Section 4.2 hereof. "**Content**" means the Archival Content. "**Content Master**" means the copy, on such Physical Media as DVD, DBVT (Digital Betacam Videotape), tape, film or other mutually agreed form of media, on which NARA provides the Content to CustomFlix or an Affiliate under this Agreement.

"**CYO Service**" means that CustomFlix "Create Your Own Disc" online service that allows customers to purchase custom-made DVD compilations by choosing from a collection of short films, videos, audio, and/or musical works and having one or more of these pieces of short content burned onto a disc.

"**Customer Information**" means any and all data, content and information provided by any user of the Amazon Properties in connection with any activity on the Amazon Properties (including any personally identifying information, and any information disclosing that a user accessed or made any purchase on or through the Amazon Properties).



"Digitized Source File" means a version of the Content existing in digitized form, as created by CustomFlix or an Affiliate under this Agreement and used by CustomFlix or an Affiliate to create a Product.

"Download" means to transmit a file digitally for use and storage on a Customer's hard drive, local player, and/or other Internet-connected or portable device authorized or approved at any time by CustomFlix.

"Ingestion Fees" means the applicable setup fees defined in Exhibit B.

"NARA Logo" means the NARA logo or official seal and any other logos or trademarks provided by NARA to CustomFlix or an Affiliate for use in connection with this Agreement.

"NARA Proof Copy" means all digital copies on Physical Media of Content, manufactured by CustomFlix or an Affiliate and delivered to NARA.

"NARA Sites" means those web sites, the primary home pages of which are identified by the URLs www.nara.gov and www.archives.gov (or any successor or replacement web site).

"Packaging Materials" means all DVD art, CD art, and any other materials created by CustomFlix or an Affiliate, which may include Product Materials, to accompany the Product as delivered to the Customer, in the form set forth on Exhibit E, all individual instances of which are deemed approved by NARA.

"Physical Media" means a DVD format (DVD-R or DVD+R) or a DBVT format (or another mutually agreed-upon format) for all Content types; audio CD or MP3CD for Audio Content, or any other type of physical, recordable media now known or hereafter conceived.

"Product" means Content that has been processed by CustomFlix or an Affiliate as provided under this Agreement and is made available on Physical Media, via Streaming, or via Download, for purchase by Customers on the Amazon Properties.

"Product Materials" means all available metadata, artwork and text for Product packaging, sales materials, electronic Product images or descriptions, and any other materials concerning the Content provided by NARA to assist in the advertising, promotion, distribution and sale of the Product

"Program Compilation" means a set of content (which, for the avoidance of doubt, may include products or content from NARA in combination with content from other providers) to be made available for purchase by customers through the CYO Service.

"Promotional Clip" means up to two (2) minutes of footage related to a particular piece of Video Content, or Audio Content, each as created by CustomFlix.

"Public Domain Content" means Content that is free from copyright protection and available for use by all without restriction and without permissions or consents required from any third party.

"Selling Price" means the actual amount received by CustomFlix or an Affiliate from a Customer for a Product, net of taxes (including any applicable VAT or similar transaction taxes), shipping and handling charges, giftwrap charges, discounts, refunds, promotional offers and rebates.

"Stream" means to digitally transmit a version of the Content in so-called "streaming" formats (i.e., network video transmission and playback systems such as RealPlayer or Windows Media), which are designed such that the user is not intended to receive a permanent file copy of the sound or video recordings.

"Video Content" means Content that is provided by NARA in video format such as on videotape or DVD, DBVT, and in BetaSP, VHS, digitized or any other formats.



2. Authorization to Produce and Distribute.

2.1 Content. Subject to the terms and conditions of this Agreement, NARA hereby authorizes CustomFlix to (a) use, store, digitize, copy, perform, market, import, promote, transmit, translate, sell, display, distribute and create derivative works of the Content (including any trademarks, service marks, trade names, logos, commercial symbols and other designations ("Marks") included in the Content) on and through the Amazon Properties in all current and future available formats, including Physical Media, Streaming and Downloading, including the right to distribute the Content via Program Compilations through the CYO Service; and (b) copy, modify, and use the Content as necessary to create Promotional Clips. The parties agree that the foregoing authorization is irrevocable, royalty-free, perpetual, worldwide, nonexclusive, and sublicensable.

2.2 Promotional Clips. Subject to the terms and conditions of this Agreement, NARA hereby authorizes CustomFlix, to (i) during the Term, create or have created encoded versions of the Promotional Clips suitable for Downloading or Streaming; (ii) copy to the CustomFlix servers (or servers of CustomFlix's Affiliate) copies of the Promotional Clips as are reasonably necessary to facilitate the efficient Downloading or Streaming of Promotional Clips; and (iii) Download or Stream the Promotional Clips to Internet users. The parties agree that the foregoing authorization is irrevocable, royalty-free, perpetual, worldwide, nonexclusive, and sublicensable.

2.3 Further Incidental Technical Rights NARA gives CustomFlix (and its Affiliates and its sublicensees) permission to cause such transmission, reproduction and other use of the Content and Promotional Clips as mere technological incidents to and for the purpose of technically enabling all of the foregoing rights granted to CustomFlix (such as caching to enable display). CustomFlix may, in its sole discretion, create a reasonable number of copies of any Product that is sold on Physical Media to hold in its inventory. If CustomFlix no longer wishes to hold all or some of such inventory, CustomFlix may destroy it at its cost and without obligation to NARA. For purposes of this Agreement, a sale of a Product will be deemed to have taken place at the time that CustomFlix (or an Affiliate) fulfills (e.g., CustomFlix ships or Streams or the Customer Downloads) a Customer order for the Product.

2.4 Affiliates; Contractors. CustomFlix may outsource part of its fulfillment or other operations under this Agreement to one or more of its Affiliates or third party contractors who will be exercising the rights granted to CustomFlix (and performing some of its obligations) under this Agreement. NARA acknowledges and agrees that CustomFlix may sublicense the rights granted herein to contractors, CustomFlix's Affiliates and operators of Amazon Properties for such purposes. Such outsourcing will not relieve CustomFlix of any of its obligations under this Agreement. CustomFlix will be responsible for ensuring that each Affiliate and contractor complies with the applicable portions of this Agreement when performing services for or on CustomFlix's behalf.

2.5 Limited License to NARA.

2.5.1 Public Access to NARA Proof Copies. CustomFlix hereby grants to NARA a nonexclusive, nonassignable, nontransferable, royalty-free, perpetual, limited license, to use the NARA Proof Copies as provided by CustomFlix solely for the purpose of copying and storing the NARA Proof Copies on NARA servers as necessary to provide public access in its research rooms and to make them available to authorized vendors for reproduction of individual pieces for a fee. The following means of public access to the NARA Proof Copies will be allowable: (a) researchers will have free access onsite in NARA's research room in College Park, Maryland and other NARA research rooms and (b) researchers may copy individual pieces in the research room using their own equipment. Researchers may also purchase copies of individual pieces through NARA's approved vendor program at the standard rates that NARA charges researchers for any content copied via this program. Content obtained by researchers through public access (via (a) and (b) of this section, and through NARA-approved vendors), is in the public domain.

2.5.2. Limitations on use of the NARA Proof Copy. Other than as expressly provided in Section 2.5.1, NARA will not (a) authorize or allow any other third party to directly or indirectly access the NARA Proof Copies, (b) copy the NARA Proof Copies or any portion thereof on behalf of any third party; or (c) Download or Stream (either directly or indirectly or through any third party), or in any other way transmit or distribute the NARA Proof



Copies or any portion thereof outside of the NARA servers. If NARA wishes in the future to Download or Stream on the www.archives.gov web site any individual pieces of the NARA Proof Copies, NARA may obtain a copy of any Digitized Source File on Physical Media (each copy a "Digital Master") by paying CustomFlix the then-current applicable fees set forth at <http://www.customflix.com/prices>. Following CustomFlix's receipt of such fees, CustomFlix will create the appropriate Digital Master and ship it to NARA via prepaid shipment, with title and risk of loss to the disc on which the Digital Master is recorded passing to NARA upon CustomFlix's delivery to the carrier. Upon NARA's receipt of such Digital Master, CustomFlix grants NARA a nonexclusive, perpetual, worldwide, royalty-free license to copy and use the Digital Master in any lawful manner. The Titles that will be available for such purchase or license are those Titles for which CustomFlix has fully recouped the cost of Ingestion Fees via sales of such Titles. The parties agree that the rates may be reduced or waived at CustomFlix's discretion, with any such changes being agreed upon in writing.

2.5.3. Liability. Subject to Section 10, NARA agrees to accept all responsibility for, and to hold CustomFlix and its Affiliates harmless for, any third-party claims of violation or infringement of intellectual property or other rights arising out of any Content distributed by NARA according to the methods set forth in this Section 2.5.

3. Obligations of the Parties.

3.1 Content Delivery. NARA (or its third party vendors on behalf of NARA) will ship the Content on Content Masters to CustomFlix's (or any of its Affiliates') physical premises (the "CustomFlix Premises") on a schedule to be mutually agreed between the parties, and in accordance with the process described in Exhibit D. NARA (or its third party vendors on behalf of NARA) will ship all such Content Masters to the CustomFlix Premises via prepaid shipment, and NARA (or its third party vendors on behalf of NARA) will be solely responsible for all transportation costs associated with such shipment. Risk of damage or loss to Content Masters and Promotional Clips passes to CustomFlix upon CustomFlix's acceptance of the same from the carrier. As between the parties, title to the Content will at all times remain with NARA. CustomFlix will, at its sole expense, return all Content Masters delivered to the CustomFlix Premises to NARA (or, upon written notification by NARA, its third party vendors on behalf of NARA) after it creates the Digitized Source File, and CustomFlix will do so freight prepaid, and risk of loss will transfer to NARA at the time of delivery by CustomFlix to the carrier.

3.2 No Original Content Masters; Limitation. In no event will NARA send an original Content Master to the CustomFlix Premises. Subject to the provisions of Section 10, CustomFlix's sole liability, and NARA's sole remedy for a lost or damaged Content Master will be the lesser of: (a) the replacement cost of the physical media on which the Content Master is contained; or (b) fifty dollars (US\$50.00). For the avoidance of doubt, NARA acknowledges and agrees that CustomFlix will have no liability for any loss or damage to any Content or Content Master resulting from ordinary wear and tear in connection with the activities contemplated hereunder.

3.3 Processing. Subject to the terms of this Agreement and following receipt of the Content Masters, CustomFlix will use commercially reasonable efforts to ingest the Content according to a schedule to be determined in CustomFlix's sole discretion and according to the functional specifications delivered to NARA by CustomFlix. In accordance with the process described in Exhibit D, CustomFlix will donate a copy of the NARA Proof Copies for Content that has been ingested to NARA on a quarterly (or such other frequency, as mutually agreed in writing) basis during the Term, with title passing to NARA upon CustomFlix's delivery to the carrier. Each such delivery will include the NARA Proof Copies for any Content that has been ingested since the last such delivery to NARA. Public access to the NARA Proof Copies will be in accordance with Section 2.5 of this agreement.

3.4 Right of Rejection and Removal. CustomFlix may, in its sole discretion: (a) refuse to include any Content or Product for distribution, or limit the modes of distribution for any Product, (b) remove any Products from distribution, or (c) reject any Content at any time, with or without cause. If CustomFlix rejects Content prior to NARA's approval of the applicable NARA Proof Copy, then no Ingestion Fees will apply to such Content. NARA will remain liable for all fees and other amounts that may be due under this Agreement in connection with any Product or Promotional Clip that CustomFlix removes from distribution because (x) CustomFlix has a reasonable basis to believe that such Product or Promotional Clip (or the underlying Content) does not comply with the Content Policy, which can be found at <http://www.customflix.com/Support/ContentGuidelines.jsp>, and which may be



updated from time to time ("Content Policy") or there is an underlying rights concern with such Product or Promotional Clip; or (y) NARA requested such removal. In the event that CustomFlix rejects Content for reasons other than those stated above in subsection (x) hereof, CustomFlix will waive any Ingestion Fees associated with such Content. CustomFlix will notify NARA of all rejected or removed Content in writing (which may be via e-mail)

3.5 Packaging and Branding. At CustomFlix's discretion, Products may be packaged in a manner consistent with the way in which it packages similar content that is made available for commercial distribution. CustomFlix will create the Packaging Materials. CustomFlix may add barcode(s) as needed to facilitate manufacturing and sales, may reserve space for a UPC or other standard bar code, and may include a brief reference to CustomFlix and/or an Affiliate on such Packaging Materials.

3.6 Marketing; Branding; Rights Evaluation.

3.6.1 By CustomFlix. See Exhibit F hereto for obligations of Amazon Services LLC, made by its execution thereof a party to this Agreement solely for the purposes of the obligations on Exhibit F.

3.6.2 By NARA. NARA will include (where possible) the Amazon Logo on pages within the NARA Sites for purposes of (a) promoting the availability of the Products for sale via the Amazon Properties; (b) as soon as practicable, linking from the NARA Sites to the Detail Pages where a Customer can purchase Products; and (c) identifying CustomFlix or an Affiliate as one of its commercial retail partners on any page, presentation or list of similar other partners, provided that the mention of CustomFlix or its Affiliate is not materially different in size or prominence than that of any other similarly listed partner. In situations where NARA is prohibited for statutory or regulatory reasons from placing the Amazon Logo on pages within the NARA Sites, then NARA will include an alternate trademark (e.g., an Amazon word mark) or other designation to be provided by CustomFlix or an Affiliate.

3.6.3 License. NARA hereby grants to CustomFlix, during the Term and subject to the terms and conditions of this Agreement, a nonexclusive, nontransferable (but sublicensable to Affiliates) license to use, reproduce, transmit, display, perform, and distribute NARA's logo and any other materials supplied by NARA and requiring such license in performing the obligations of CustomFlix or any Affiliate under this Agreement; provided that all such usage will be subject to and in compliance with any written trademark usage guidelines provided by NARA, and any printed materials containing NARA's logos will be subject to NARA's prior written approval. CustomFlix or its Affiliate will comply with NARA's removal requests as to the use of NARA's logo provided by NARA for use hereunder and will avoid knowingly taking any action intended to diminish the value of such logo.

3.7 Linking. Subject to CustomFlix's prior written approval of the content, location and placement of such links, NARA will establish links from individual search result pages from within the NARA Sites to the Detail Pages for the Products, substantially as depicted in Exhibit C.

3.8 Rights Protection. At CustomFlix's discretion, Products may be distributed with such commercially reasonable digital rights management systems ("DRM") as CustomFlix elects to employ (if any), consistent with those it uses for similar content under commercial distribution programs for similar content. Notwithstanding the foregoing, NARA acknowledges and agrees that CustomFlix may, in its sole discretion, elect to distribute the Products without any DRM. NARA Proof Copies will not have DRM.

3.9 Account Managers. Each party will assign an account manager (which manager will be subject to change from time to time upon written notice by the assigning party) to facilitate coordination of the parties' performance of their respective obligations hereunder. In addition, NARA will ensure that each such personnel member is a staff member who will work with CustomFlix to assist in determining the best approach to organizing and digitizing the Content during the Term.

3.10 Rights Evaluation. Notwithstanding the provisions of Section 7.1 hereof, the parties agree that selection and delivery of Content for inclusion in the program hereunder will be conducted pursuant to the process set forth on Exhibit D hereto. Specifically, as part of the process set forth on Exhibit D to the Program Terms, NARA will notify CustomFlix of all known rights and other restrictions relating to the Content.



4. No Exclusivity; Confidentiality, Exclusions.

4.1 No Exclusivity. The rights and obligations of the parties are nonexclusive and each may engage in transactions with third parties, or undertake its own activities, whether or not similar to the transactions described herein or competitive with the business, products, or services of the other party. For the avoidance of doubt, CustomFlix or its Affiliates may obtain the identical content as provided by NARA under this Agreement from a third party source, ingest it and list it for sale on the Amazon Properties and in such event, CustomFlix will have no obligation to make any fees or payments of any kind to NARA for the sale of such third party content. NARA acknowledges and agrees that CustomFlix has no obligation to list any or all of the Content or Products on the Amazon Properties and CustomFlix is not making any assurance, and NARA has no assurance, that CustomFlix will sell any number of Products under this Agreement.

4.2 Confidentiality

4.2.1 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 and its Affiliates (including Confidential Information disclosed prior to the Effective Date). 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 at a minimum consistent with the manner in which such party maintains the confidentiality of its own confidential information) 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 other, directly or indirectly, for any purpose other than the purpose of this Agreement. Each party will only reveal any Confidential Information of the other to employees, directors, officers, and trustees of its organization having a need to know in order to fulfill the duties of such party hereunder. Notwithstanding the foregoing, either party may disclose Confidential Information to the extent 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 CustomFlix Confidential Information (or that of any CustomFlix Affiliate) will be preceded by notice provided to CustomFlix in accordance with NARA regulation and policy, including 36 C.F.R. 1250.26(f), 1250.82 & 1256.52 (2004), or as subsequently amended. In addition, NARA will make best efforts to notify CustomFlix of the contents of any disclosure that contains Confidential Information and identify the recipient of such information.

4.2.2 "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.

4.2.3 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, as shown by written documentation of the recipient; (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, (iv) is independently developed by the recipient without the use of, or reference to, the Confidential Information of the discloser; or (v) constitutes Feedback (as defined in Section 12.4). 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



4.2.4 Neither party will issue any press release or similar public announcement regarding the existence or content of this Agreement or any project plan without the other party's prior written approval.

5. Pricing; Fees; Payment Terms; Returns.

5.1 **Pricing; License Fees.** CustomFlix will have sole discretion in setting the Selling Price for all Products sold to Customers (including the right to create bundles and Program Compilations, set stand-alone pricing, create subscription programs, or other types of pricing plans). For each Product that CustomFlix sells, rents, or distributes through subscription or otherwise during the Term as authorized under this Agreement, CustomFlix will pay NARA a licensing fee in the amount of twenty percent (20%) of the Selling Price applicable to the Product (less any deduction or offset amount that is authorized and applicable as provided herein) (the "License Fee"). NARA acknowledges and agrees that CustomFlix may, in its discretion, (i) grant Customers permission to use a Product, which permission entitles them to make multiple copies of the Product for access and viewing on multiple devices, all for one Selling Price; and (ii) authorize Customers who have already purchased a Product to refresh a download of such Product for no additional fee. If CustomFlix elects to bundle a Product with other Products for sale on the Amazon Properties, or to make Products available via a subscription service, CustomFlix will allocate the Selling Price for the bundle among the contents of the bundle and will allocate the Selling Price for the subscription service based on the Product(s) the subscriber accesses (e.g., via Streaming or Downloading), and CustomFlix will pay NARA a License Fee on the portion of the Selling Price of the bundled product or subscription service, as applicable, that CustomFlix determines, in its sole discretion, is reasonably attributable to the Product or Products. For Products sold on Program Compilations, CustomFlix or its Affiliate will pay NARA a licensing fee calculated as no less than 20% of the Selling Price, which will be prorated based on the relative duration of all titles on the related Physical Media and will be divided accordingly among all content providers whose content is included on such Physical Media. For example, if a DVD containing 90 minutes of content is sold for \$19.95, and NARA Products account for 40 minutes of that content, CustomFlix or its Affiliate will pay NARA no less than \$1.75 (20% of \$19.95, prorated at 40 out of 90 minutes).

5.2 **Ingestion Fees; Deferral.** NARA will be responsible for the Ingestion Fees set forth in Exhibit B for each piece of Content ingested by CustomFlix under this Agreement. Notwithstanding the foregoing, the parties agree that CustomFlix will defer NARA's obligation to pay the applicable Ingestion Fees (including any applicable taxes) on all Content ingested by CustomFlix (the "Deferred Amount"), and deduct such Deferred Amount from any and all payments due to NARA for License Fees due on future sales of Products under this Agreement. Any and all Deferred Amounts will be offset by CustomFlix against any License Fees due and owing to NARA for any Products sold during each Reporting Period (as defined below) until the Deferred Amount balance reaches zero. For the avoidance of doubt, the preceding deferral process will apply each time NARA has a Deferred Amount balance that is greater than zero, even if it has previously had a zero balance (i.e., in the event additional Content is ingested by CustomFlix). If License Fees due and owing to NARA for Products sold are insufficient to offset the Deferred Amounts, NARA will have no obligation to pay such outstanding Deferred Amounts unless and until additional License Fees accrue against which such Ingestion Fees can be offset by CustomFlix.

5.3 **Payment Terms.** CustomFlix will provide NARA with sales reports showing Product sales by title, as well as Ingestion Fees accrued (if any), during the immediately preceding calendar month, which reports will be provided to NARA within thirty (30) days following the end of each calendar month (a "Reporting Period") during the Term. Subject to the provisions of Section 5.2, CustomFlix will pay NARA any amounts due within sixty (60) days following the end of each calendar month during the Term, for sales of Products during the applicable Reporting Period.

5.4 **Customer Returns.** CustomFlix may, in its sole discretion, determine how to handle Customer returns of Products, including without limitation in either of the following ways. (a) place the returned copy of the Product into inventory and resell it to another Customer, in which case CustomFlix will have no obligation to pay NARA a License Fee on the resale of such item, or (b) destroy the copy of the Product and calculate amounts due to NARA net of the destroyed return.

6. Allocation of Rights



6.1 NARA. Subject to the licenses, and as between the parties, NARA will own all rights, title, and interest in the Archival Content (which includes the Product Materials and other materials provided by NARA), Content Masters and NARA Marks. For avoidance of doubt, CustomFlix claims no right in any portion of the Archival Content.

6.2 CustomFlix. Subject to NARA's underlying ownership rights in the Content, and as between the parties, CustomFlix will own all rights, title and interest in the Digitized Source Files, Promotional Clips created by or on behalf of CustomFlix, Packaging Materials, CustomFlix Marks and any other materials created by CustomFlix, and CustomFlix will have legal title to the copy of each Product created under this Agreement. CustomFlix is not creating the Digitized Source File or the Products as a "work for hire," as defined in the Copyright Act, 17 U.S.C. § 101.

6.3 Customer Information. As between the parties, CustomFlix and its Affiliates will own all right, title and interest in Customer Information, the Amazon Properties (including the look and feel), and any and all related materials or technology created by or on behalf of CustomFlix or any Affiliate

6.4 Except as this Agreement specifically provides, neither party will acquire any right to use, or any title or interest in, the other party's intellectual property rights.

7. Representations and Warranties

7.1 NARA. NARA represents and warrants that (a) it has and will have full authority to enter into this Agreement and to perform its obligations hereunder; (b) it will comply with all applicable laws, rules, regulations and orders applicable to its performance hereunder; and (c) to the best of NARA's knowledge (i) the Archival Content was produced or acquired by the Federal Government and (ii) the Archival Content is in the public domain and (iii) there are no underlying copyright issues related to the dissemination and use of the Archival Content. Furthermore, NARA is responsible for protecting the privacy of individuals mentioned in its records. Accordingly, NARA represents and warrants that all selections of Archival Content will be reviewed for privacy before they are provided to CustomFlix for Digitization, and that NARA (or its third party vendors on behalf of NARA) will only release Archival Content to CustomFlix for which NARA has identified that there are no privacy concerns.

7.2 CustomFlix. CustomFlix represents and warrants to NARA that (a) it has and will have full authority to enter into this Agreement and to perform its obligations hereunder; and (b) it will comply with all applicable laws, rules, regulations and orders applicable to its performance hereunder.

8. Potential Infringement. NARA will promptly notify CustomFlix in writing of any written claim made by a third party that any of the Content violates, misappropriates or infringes any third party copyright or any other intellectual property right. In the event that CustomFlix or an Affiliate suffers any liabilities, losses or damages (including reasonable attorneys' fees) as a result of a third party claim that the Content infringes, violates or misappropriates any copyright or intellectual property or other right (collectively, "Losses"), NARA acknowledges and agrees that CustomFlix may offset such Losses against any and all License Fees due under this Agreement until such Losses have been recouped in full. Except as set forth otherwise herein, and for the avoidance of doubt, CustomFlix acknowledges that it has no right of offset or indemnification or other recovery hereunder from NARA.

9. Term and Termination

9.1 Term. The initial term of this Agreement is for three (3) years from the Effective Date (the "Initial Term"). After the Initial Term, the term of this Agreement automatically will renew for subsequent one (1) year terms (each such renewal term, a "Renewal Term" and, together with the Initial Term, the "Term") unless either party provides the other party with at least ninety (90) days' prior written notice of termination before the end of the then-current Term.

9.2 Termination. Either party may terminate this Agreement at any time, if the other party materially breaches this Agreement and fails to cure the breach within thirty (30) calendar days after the nonbreaching party



has provided the breaching party with written notice specifying the breach. Either party also may terminate this Agreement upon notice to the other party if the other party ceases to do business in the normal course, becomes or is declared insolvent or bankrupt, or is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) that is not dismissed within ninety (90) days of its initiation, or makes an assignment for the benefit of creditors.

9.3 Effect of Termination. Sections 1, 2.1, 2.2, 2.3, 2.4, 2.5, 3.2, 4, 5, 6, 8, 9.4, 10 and 11.4-11.8 inclusive will survive the termination of this Agreement.

9.4 True-up Upon Termination. Within sixty (60) days following termination of this Agreement for any reason, CustomFlix will remit payment to NARA for all outstanding amounts owed to NARA. In the event that at (a) the end of the Initial Term, or (b) the effective date of termination, NARA has an outstanding credit balance due and owing to CustomFlix or its Affiliates, or there are outstanding Losses as provided in Section 8, CustomFlix or its Affiliates will have the right to set off such credit balance against any amounts due and owing to NARA.

10. DAMAGES DISCLAIMER AND LIMITATION. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR ANY FORM OF INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER FROM ANY CAUSES OF ACTION OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. EACH PARTY'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE COSTS EXPENDED BY THE OTHER PARTY HEREUNDER AS OF THE DATE OF SUCH CLAIM OR \$50,000.00, WHICHEVER IS LOWER. The parties agree that (i) the mutual agreements made in this Section 10 reflect a reasonable allocation of risk, and (ii) that each party would not enter into the Agreement without these limitations on liability.

11. Miscellaneous

11.1 Relationship of the Parties. Nothing contained in this Agreement will create a partnership, joint venture, or agency relationship between the parties. The parties will act as independent contractors hereunder, and neither will have the authority to bind the other with respect to any third party.

11.2 Assignment. Neither NARA nor CustomFlix may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, except that CustomFlix 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 Amazon.com, Inc. immediately prior to the transaction resulting in the assignment hereof, CustomFlix 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 CustomFlix, to provide thirty days' written notice to CustomFlix of termination of this 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.

11.3 Publicity. Neither party will issue any press releases or similar public announcement regarding this Agreement, its terms, or the nature or existence of any relationship between the parties without the other party's prior written consent. Except as specifically authorized herein, neither party will use any trade name, trademark, service mark, logo, commercial symbol, or any other proprietary right of the other party or any of its Affiliates in any manner (including but not limited to use in any client list, press release, advertisement or other promotional material) without prior written authorization of such use for CustomFlix, by a Vice President of CustomFlix, and for NARA, by its General Counsel.

11.4 Feedback. NARA may elect to provide or make available suggestions, comments, ideas, improvements, or other feedback or materials to CustomFlix or any of its Affiliates in connection with or related



to the Amazon Site, including, but not limited to any technology utilized within or in connection with the Amazon Site or any other web site operated by or for CustomFlix or its Affiliates ("**Feedback**"). Both parties agree that CustomFlix and its Affiliates will (entirely without obligation, compensation or restriction of any kind) be free to use, disclose, reproduce, modify, license, transfer and otherwise distribute, and exploit the Feedback in any manner

11.5 Notices. Any notice, consent, approval or other communication required under this Agreement will be in writing and, to be effective, must be delivered by registered letter, receipted commercial courier, or electronically receipted facsimile transmission (acknowledged in like manner by the intended recipient), addressed as follows:

If to CustomFlix:

100 Enterprise Way, Suite A-200
Scotts Valley, CA 95066
Attn: Dana LoPiccolo-Giles
Fax: (831) 401-2707

With a copy to

Amazon.com, Inc.
1200 12th Avenue South
Seattle, WA 98144
Attn: General Counsel
Fax: (206) 266-7010.

If to NARA:

National Archives and Records Administration 8601 Adelphi Road, Suite 4400
College Park, MD 20740-6001
Attn: Michael J. Kurtz, Assistant Archivist
Office of Records Services - Washington, DC
Fax: 301-837-3653

With a copy to:

8601 Adelphi Road, Suite 3110
College Park, MD 20740-6001
Attn: Gary M. Stern, General Counsel
Fax: 301-837-0293

Either party may from time to time change the addresses or individuals specified in this section by giving the other party notice of the change as provided in this section.

11.6 Waiver; Severability. The failure of either party to enforce any provision of this Agreement will not constitute a waiver of the party's rights to subsequently enforce the provision. The remedies specified in this Agreement are in addition to any other remedies that may be available to a party at law or in equity. If any provision of this Agreement is held to be invalid, such invalidity will not affect the remaining provisions.

11.7 Governing Law; Jurisdiction; Venue. 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 Washington state law without application of conflict of laws provisions. Either party may, without the necessity of first posting a bond or other security or demonstrating any actual damages, seek and, if granted, obtain immediate equitable or injunctive relief from any court of competent jurisdiction in the event of a breach or threatened breach by the other party of obligations set forth in this Agreement related to intellectual property and/or confidentiality, without limitation of any other or further relief that may be available to that party (including monetary damages if



appropriate). The parties' rights and obligations are not governed by the United Nations Convention on Contracts for the International Sale of Goods.

11.8 Interpretation and Construction. The headings of Sections and subsections of this Agreement are for convenience of reference only and are not intended to affect the interpretation or construction of any term or condition of this Agreement. The terms "include," "includes," and "including," whether or not capitalized, mean "include but are not limited to," "includes but is not limited to," and "including, but not limited to," respectively. In resolving any dispute or construing any term or condition hereof, there will be no presumptions made or inferences drawn (a) because one of the parties (or its representatives) drafted the Agreement; or (b) because of the drafting history of the Agreement; and each party hereby waives application of, or any rights under, any law that would require the interpretation of any ambiguities in this Agreement against the party that drafted it.

11.9 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which taken together will constitute one instrument. Copies of this Agreement (including copies of any signatures) that are reproduced or transmitted via electronically receipted fax transmission will be equivalent to original documents. At either party's option the parties will deliver to one another original executed copies of this Agreement promptly after the request for the copies.

11.10 Entire Agreement. This Agreement, together with all exhibits, which are incorporated by this reference, constitutes the complete and final agreement of the parties pertaining to the Agreement's subject matter and supersedes the parties' prior agreements, understandings, and discussions. No modification of this Agreement will be binding unless in a writing signed by both parties.

National Archives and Records Administration ("NARA")

By: Lawrence Post

Name: Lawrence Post

Title: Secretary, National Archives Trust Fund Board

Date Signed: June 29, 2007

On-Demand Publishing LLC ("CustomFlix")

By: Darren Giles

Name: Darren Giles

Title: V.P.

Date Signed: 7-9-07



Exhibit A
Content Description and Delivery Schedule

NARA will deliver 200 titles to CustomFlix within thirty days of the execution hereof (the "Initial Delivery"), and following the Initial Delivery, will deliver 200 titles to CustomFlix during each month of the Term thereafter.

Content will be of various durations, and delivered on various videotape and film formats from record groups including, but not limited to, Universal Newsreels, NASA, U.S. Information Agency, Harmon Foundation, Ford Collection, United News, Longines-Wittnauer Chronoscope and other Public Domain content



Exhibit B
Ingestion Fees

The following fees apply to each type of Content ingested by CustomFlix under this Agreement ("**Ingestion Fees**"), as applicable:

NARA Master Format	Task	Fee
Videotape		\$35/tape
Film		\$150/reel



Exhibit C

Sample Search Results Page containing CustomFlix links

This screenshot is representative of the type of link (i.e., "Watch the video at Google") that NARA will place in ARC to the Amazon Site pursuant to Section 3.6.2, but it is understood that the exact wording and placement is subject to change.

ARC Identifier:	45017
Local Identifier:	255-HQ-194
Title:	The Eagle Has Landed The Flight of Apollo 11, 1969
Creator:	<u>National Aeronautics and Space Administration</u> (10/01/1958 -) (Most Recent)
Type of Archival	
Materials:	Moving Images
Level of	
Description:	Item from Record Group 255 Records of the National Aeronautics and Space Administration, 1903 - 2005
Location:	Motion Picture, Sound, and Video Records LICON, Special Media Archives Services Division (NWCS-M), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740-6001 PHONE 301-837-3540, FAX 301-837-3620, EMAIL mopix@nara.gov
Production Date:	1969
Part of:	<u>Series NASA Headquarters Films, 1962 - 1981</u>
Scope & Content	
Note:	This film tells the story of the historic first landing of men on the Moon in July, 1969. It depicts the principal highlight events of the mission from launching through post-recovery activities of Astronauts Neil Armstrong, Edwin "Buzz" Aldrin, and Michael Collins. Through television, motion picture and still photography, the film provides an "eye-witness" perspective of the Apollo 11 mission.
Access	
Restrictions:	Unrestricted
Use Restrictions:	Restricted - Possibly Some or all of this material may be restricted by copyright or other intellectual property right restrictions
Specific Records	
Type:	motion pictures (visual works)
General Note:	This film has received the following awards: the Certificate of Exhibition, Edinburgh Film Festival, 1969, Certificate of Merit, American Science Film Association, 1969, Gold Camera, U.S. Industrial Film Festival, 1970, and Ionosphere Aware, Atlanta International Film Festival, 1970. Online Resource <u>Watch the video at Google</u>
Sound Type:	Sound



Exhibit D
Content Selection & Delivery Process

Note: The term "CustomFlix," as used below, may refer to CustomFlix Labs, Inc, a wholly owned subsidiary of Amazon.com, Inc., or any Affiliate.

1) Timing and Scope of Requests

- The pilot program will consist of content from the Universal Newsreel collection dating from 1950 to 1967 and other series and individual items to be mutually-selected by CustomFlix and NARA
- Thereafter, CustomFlix will make regular submissions of up to 200 per month for approval and delivery.

2) Title Selection & Metadata

- CustomFlix will select titles and submit them to NARA on the NARA "Item Approval Request List" (IARL) or similar form created for NARA/CustomFlix approval process.
- NARA will approve list or notify CustomFlix that such title(s) are not approved, indicating all known rights restrictions on a title-by-title basis.
 - o NARA will indicate rights restrictions in the greatest detail possible.
 - o For each title that is considered to be part of the Public Domain, NARA will note "No known rights restrictions for use."
- NARA will deliver all available metadata on approved titles from which CustomFlix will create product detail pages. As a guide, a downloadable metadata worksheet can be found at: <http://www.customflix.com/Instructions/SRMetadata.jsp>
- NARA will complete IARL, per standard practice, and return to CustomFlix within 10 business days.

3) Delivery of Film and Video Programs to CustomFlix

A. Film (16mm or 35mm) Intermediates

- CustomFlix will forward the IARL to NARA-approved vendor for creation of a digital videotape master.
- NARA will make intermediate film copies available for vendor within 10 business days.
- Within 15 business days of receiving the intermediate film from NARA, NARA-approved vendor will make CustomFlix copy and ship to CustomFlix.
- NARA-approved vendor will be responsible for shipping and handling of intermediate copies to and from NARA, per standard NARA policy.
- CustomFlix will cover costs of the NARA-approved vendor.
- Upon completion of the pilot, CustomFlix will, at its discretion, send its digital videotape copies to NARA for NARA to use as video intermediate copies if needed.

B. Videotape (any format) Intermediates



- NARA will deliver on loan videotape intermediate copies to CustomFlix within 10 business days of receipt and approval of related items on the Item Approval Request List.
- NARA will pay for shipping to CustomFlix location.
- CustomFlix will ingest and return videotape intermediate copies to NARA within 60 days of receipt. Upon request from NARA, specific titles can be returned within 10 days, if needed CustomFlix will pay for return shipping.

C. Film or videotape for which there is no NARA intermediate copy (Preservation copy only)

- CustomFlix will forward Item Approval Request List to NARA-approved vendor for creation of intermediate digital copy.
- NARA will deliver preservation copies to approved vendor (approved for handling preservation copies) within 10 business days.
- Within 15 business days of receiving the film from NARA, NARA-approved vendor will send newly-produced intermediate digital videotape copy to NARA to verify, label, and enter in database for control purposes.
- NARA-approved vendor will be responsible for courier and handling of intermediate copies to and from NARA, per standard NARA policy.
- CustomFlix will cover costs of the NARA-approved vendor.
- NARA will ship intermediate copies (at NARA's expense), on loan, to CustomFlix for ingestion.
- CustomFlix will return to NARA the intermediate copy within 60 days of receipt of intermediate from NARA with additional option of 30 day renewal of loan when requested CustomFlix pays for return shipping

4) Delivery to NARA:

- For each NARA title ingested by CustomFlix, CustomFlix will deliver to NARA a NARA Proof Copy (e.g DVD) for NARA use in the research room.
- For each title ingested by CustomFlix, CustomFlix will deliver to NARA up to 2 minutes or 30% (whichever comes first) of each title in a low-resolution, streaming digital format.
- CustomFlix will also bear the cost of creating and will deliver to NARA an intermediate copy in Digital Betacam (or another mutually agreed-upon format) for content ingested from Preservation copies.
- CustomFlix will bear the cost of creating its own copy made by a vendor from a NARA film intermediate. CustomFlix intends to send NARA the CustomFlix copy for NARA to use as a video intermediate copy if needed.



EXHIBIT E

FORM OF PACKAGING MATERIALS

Sample image. Actual template will use the 1934 Seal of the National Archives of the United States, to be provided by NARA.

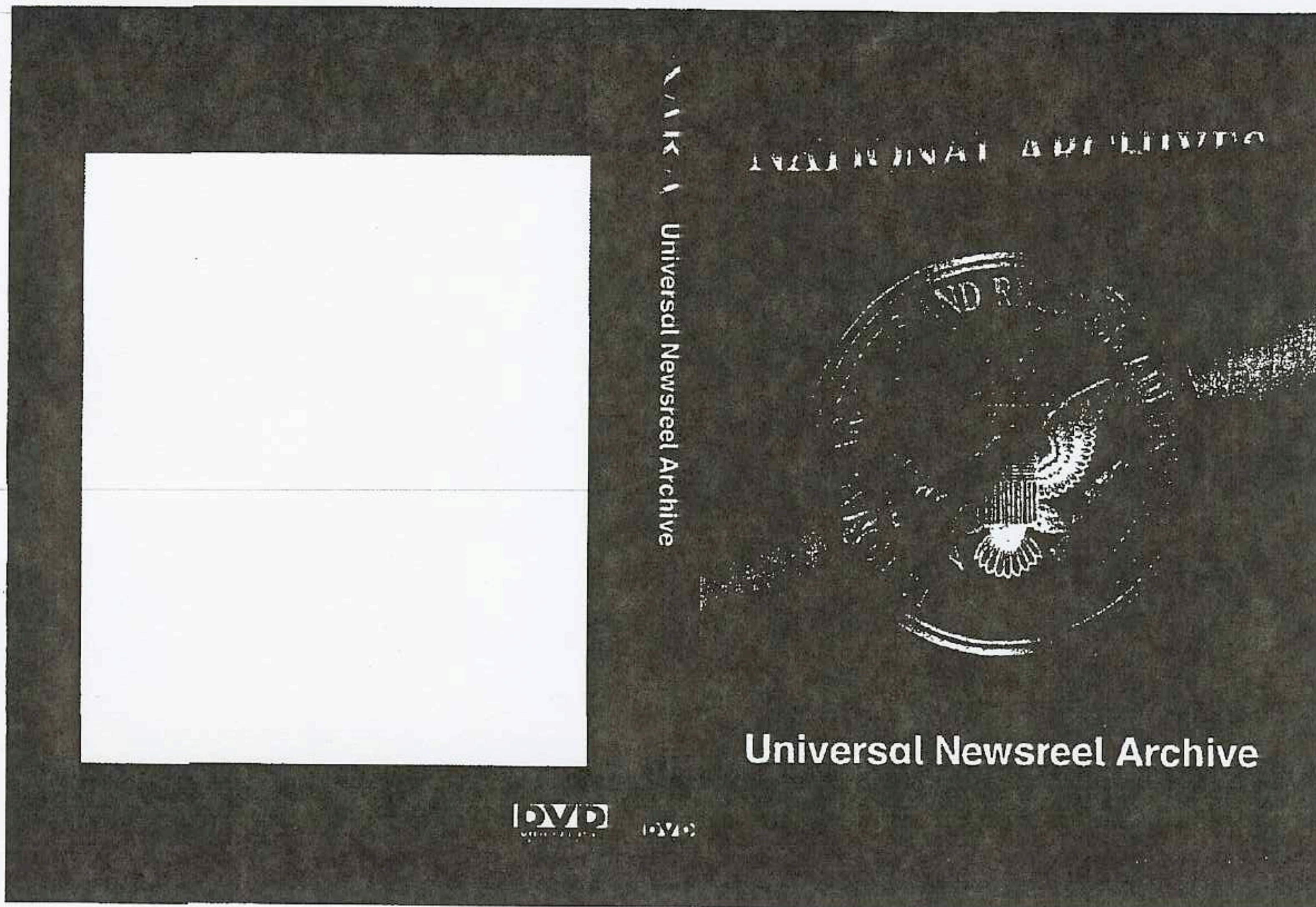


EXHIBIT F

MARKETING & BRANDING COMMITMENTS OF AMAZON SERVICES LLC ("Amazon Services")

In consideration of the commitments of NARA set forth in Section 3 of the Agreement, Amazon Services LLC, an Affiliate of Customflix, hereby becomes a party to the Agreement for the sole purpose of the marketing and branding obligations of this Exhibit F, and agrees as follows:

1. Use of Logos; Trademark License.

1.1 By Amazon Services. During the Term, Amazon Services will include within the pages of the Amazon Properties where Products are made available for sale to Customers (each, a "**Detail Page**") the NARA Logo and/or text attribution to NARA as the source of the content. Amazon Services and its Affiliates may, in their sole discretion, contextually promote the Products in its advertising, marketing and promotional efforts.

1.2 License. Amazon Services hereby grants to NARA, during the Term and subject to the terms and conditions of this Exhibit F and the Agreement, a nonexclusive, nontransferable license to use, reproduce, transmit, display, perform, and distribute the Amazon Services's logo and copyrightable materials supplied by Amazon Services as necessary to perform NARA's obligations under this Exhibit F and the Agreement; provided that all such usage will be subject to and in compliance with any written trademark usage guidelines provided by Amazon Services or CustomFlix or an Affiliate, and any printed materials containing Amazon Services's logos will be subject to the prior written approval of Amazon Services. NARA will comply with Amazon Services's removal requests as to the use of its logo provided by Amazon Services (or an Affiliate) for use hereunder and will avoid knowingly taking any action intended to diminish the value of such logo.

2. NARA-Branded Store. Amazon Services (or its Affiliate) may, in its sole discretion, create a NARA-branded store within the Amazon Site (the "**NARA-Branded Store**") that promotes the Products. Amazon Services will have sole control over the look and feel of the NARA-Branded Store, including the content thereof, the Products to be listed for sale within the NARA-Branded Store, and the location of the NARA-Branded Store within the Amazon Site. Amazon Services intends to link from the NARA-Branded Store to the www.archives.gov web site.

3. Hosting. All Content that is made available on the Amazon Properties via Downloading or Streaming will be hosted by Amazon Services (or its Affiliates, contractors or agents). Amazon Services will be responsible for all hosting, bandwidth and other costs and expenses associated with such hosting. NARA will be responsible for hosting all content that it makes available on the NARA Sites and any associated websites.

NARA, CUSTOMFLIX AND AMAZON SERVICES AGREE THAT CUSTOMFLIX WILL NOT BE LIABLE FOR ANY BREACH BY AMAZON SERVICES (OR ITS AFFILIATES) OF AMAZON SERVICES'S OBLIGATIONS UNDER THIS EXHIBIT. Amazon Services hereby signs on the date written below by its duly authorized representative

Amazon Services LLC

By: _____

Name: _____

Title: _____

Date Signed: _____

