

SCOLA AFFILIATE AGREEMENT

THIS AFFILIATE AGREEMENT (this "Agreement") is effective October 1, 2015 ("Effective Date") by and between SCOLA, a Nebraska not-for-profit corporation with a place of business at 21557 270th Street, McClelland, Iowa 51548 ("SCOLA"), and NY 3Rs Association, Inc., an association [corporation] with a place of business at 390 Packett's Landing, Fairport, NY 14450 ("Affiliate"). "Party" or "Parties" means, individually, SCOLA or Affiliate as the context requires and, collectively, SCOLA and Affiliate.

Description of Purchase:

All SCOLA® website services and SCOLA® mobile app which includes:

World TV Online	Foreign Text
Digital Archives	International Radio
Insta-Class	Country Overview Videos
Specialized Word Video Search	Learning Objects
People & Places	Savoir-Vivre
On the Street Videos	Video Editor

Cost: Affiliation with NY 3Rs Association, Inc. \$750.00 annually. May add the following at an additional cost of:
\$100.00 annually Public & K-12 library
\$200.00 annually Higher Education Institution Libraries

PREAMBLE:

SCOLA is a nonprofit, tax-exempt educational organization that distributes original foreign language, text/print, television, video and audio programming and related foreign media content received from SCOLA Programming Providers in countries around the world ("SCOLA Content") to SCOLA Affiliates via satellite broadcasting, the Internet (through the SCOLA website) and other transmission services (collectively, the "Online Services"). SCOLA's Affiliates include, but are not limited to, universities, schools, individuals, special interest groups, companies, state telecommunications entities, governmental organizations and cable providers that have entered into Affiliate Agreements with SCOLA to use SCOLA Content for Educational Purposes. For purposes of this Affiliate Agreement, Educational Purposes means use in educational research and teaching foreign language and culture and/or for limited commercial purposes as specifically approved by SCOLA. SCOLA distributes SCOLA Content from over one hundred thirty (130) countries in its original form. SCOLA transmits SCOLA Content twenty-four (24) hours per day, seven (7) days per week.

PROVISIONS

1. License; Intellectual Property Rights.
 - a. SCOLA grants Affiliate (i) the nonexclusive, nontransferable right to use the Online Services for the purposes of accessing SCOLA Content, and (ii) the nonexclusive right to use SCOLA Content for its own Educational Purposes and indefinite archival of the SCOLA Content as required for this use as long as the SCOLA Affiliate Agreement is in force. SCOLA grants Affiliate permission to broadcast and retransmit SCOLA programming for educational use and community viewing purposes only and not to be used for any sales or profit. SCOLA will make the SCOLA Content available to Affiliate pursuant to SCOLA's monthly programming schedule or through access to SCOLA's Internet site. SCOLA will make commercially reasonable efforts to inform Affiliate of any temporary service preemption or other schedule changes via its monthly programming schedule update or with as much advance notice as reasonable under the circumstances.
 - b. Except as expressly provided herein, all right, title and interest (including all copyrights and other Intellectual property rights) in the Online Services and SCOLA Content (in both print and machine-readable forms) belong to SCOLA or its third-party suppliers of content, and Affiliate shall not acquire any proprietary interest in the Online Services or SCOLA Content, or any copies or derivatives thereof.
2. Term and Termination. The term of this Affiliate Agreement is for a period of 12 months from the Effective Date (the "Initial Term") and shall thereafter automatically renew for subsequent [twelve (12)] month periods (each, a "Renewal Term") (the Initial Term and all Renewal Terms shall be collectively referred to herein as the "Term"). Affiliate must notify SCOLA in writing at least thirty (30) days prior to the expiration of the then current Term that it does not intend to renew this Affiliate Agreement. Affiliate must notify SCOLA in writing at least thirty (30) days prior to the expiration of the then current agreement term that it does not intend to renew this Affiliate Agreement. This Affiliate Agreement may also be terminated by SCOLA without liability hereunder in the event of Affiliate's failure to comply with the provisions of this Affiliate Agreement or in the event that SCOLA no longer maintains rights, or the ability to provide, in whole or in part, the SCOLA Content. Sections 2-4, 6-9 and 11-13, and any remedies for Affiliate breach of this Affiliate Agreement shall survive any termination or expiration of this Affiliate Agreement.
3. No Resale.
 - a. Affiliate shall not use the SCOLA Content in any products for resale to any third parties without SCOLA's prior written approval. Any commercial use approved by SCOLA will be limited to teaching and education regarding foreign language and culture, including, but not limited to, teaching, testing, assessment, listening comprehension, increasing vocabulary, for making the learning of foreign language more effective and enjoyable and for cultural enrichment.
 - b. SCOLA has entered into Basic Programming Agreements with its Programming Providers that allow Affiliate to make use of SCOLA Content for the purposes provided for herein. Such purposes include the permission to broadcast SCOLA programming by Affiliate for community viewing and educational purposes only and not to be used for any sales or profit by Affiliate except as expressly agreed to in writing with SCOLA.
4. Use of Materials. Affiliate shall furnish to SCOLA, at SCOLA's request, copies of representative examples of all material, in whatever format, in which the SCOLA Content appears ("Materials"). SCOLA shall have the right to review Affiliate's use of the SCOLA Content in any form, including in Materials, to make sure it is being used for Educational Purposes or other approved purposes consistent with this Affiliate Agreement. If SCOLA determines the SCOLA Content is not being used according to the provisions of this Affiliate Agreement it shall advise Affiliate in writing. If Affiliate fails to remedy any improper use within the time period set out in SCOLA's notice, SCOLA may terminate this Affiliate Agreement.
5. Unauthorized Use of Content. Affiliate will promptly notify SCOLA of any unauthorized use of the SCOLA Content by others of which Affiliate becomes aware. SCOLA shall have the sole right, at its discretion, to bring any action on account of any such unauthorized use, and Affiliate shall cooperate with SCOLA, as SCOLA may request, in connection with any such actions brought by SCOLA.
6. Confidentiality.
 - a. Each Party may disclose (the "Discloser") confidential and proprietary information ("Confidential Information") to the other Party (the "Recipient"). In each such case, and to the extent allowed by law, the Recipient shall hold such Confidential Information in confidence and shall not disclose such Confidential Information except to a Party's affiliates, employees or agents who have a need to know such Confidential Information in order to perform such Party's obligations under this Affiliate Agreement. Neither Party shall have any rights in the other Party's Confidential Information and shall return or destroy all such Confidential Information upon the termination of the applicable Affiliate Agreement or the request of the Discloser.
 - b. Notwithstanding any other term hereof, the term "Confidential Information" shall not include information that (a) was already in the lawful possession of the Recipient prior to receipt thereof, directly or indirectly, from the Discloser; (b) lawfully becomes available to the Recipient on a nonconfidential basis from a source other than the Discloser that is not under an obligation to keep such information confidential; (c) is generally available to the public other than as a result of a breach of this Affiliate Agreement by the Recipient or its representative(s); or (d) is subsequently and independently developed by employees, consultants or agents of the Recipient without reference to the Confidential Information disclosed hereunder. In addition, a Party shall not be considered to have breached its obligations by disclosing Confidential Information of the other Party as required to satisfy any request of a competent governmental body, provided that, promptly upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party of the request prior to making such disclosure in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.
7. Effect of Termination. Upon the termination or expiration of this Affiliate Agreement, all rights of Affiliate granted hereunder shall terminate and Affiliate shall immediately discontinue the use of the SCOLA Content and thereafter shall no longer use or have the right to use the SCOLA Content or any variation or simulation thereof, including Affiliate-archived SCOLA Content. This limitation shall not apply to Materials properly issued by Affiliate in accordance with the terms of this Affiliate Agreement prior to the termination. If this Affiliate Agreement is terminated by SCOLA due to SCOLA no longer having rights to provide, in whole or in part, the SCOLA Content, then SCOLA shall refund to Affiliate any prepaid fees, on a prorated basis, related to the unavailability of such content. All other payments are nonrefundable.
8. Copyright Notices and Markings. Affiliate shall use, and shall not remove, the appropriate SCOLA markings, including any copyright notice markings, in the form that SCOLA shall, at its sole discretion, require, on Affiliate's Materials containing SCOLA Content. Affiliate shall not otherwise obstruct or affix or use any markings identifying the SCOLA Content, including any other copyright notice in connection with the SCOLA Content, without SCOLA's prior written approval.
9. Representations and Warranties. Each Party to this Affiliate Agreement represents, warrants and undertakes to the other Party that (i) it has the full right, power and authority to enter into this Affiliate Agreement and to perform its obligations under this Affiliate Agreement; (ii) the execution of this Affiliate Agreement by such Party, and the performance by such Party of its obligations and duties hereunder, do not and will not violate any agreement to which it is party or by which it is otherwise bound; and (iii) when executed and delivered by such Party, this Affiliate Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms. Affiliate continuously represents and warrants during the Term that its use of the Online Services and SCOLA Content will not (i) infringe any patent, trademark, copyright or other property right of any third party, or (ii) violate any laws, rules or regulations.
10. Force Majeure. No Party shall be responsible for any failures or delays from causes beyond its control, including, without limitation, acts of God, acts of government, war, fires, floods, strikes or failure by third parties (not an Affiliate or subsidiary) to comply with their obligations to that Party. Affiliate shall make no assignment of this Affiliate Agreement or its performance under this Affiliate Agreement without the express written permission of SCOLA.
11. Indemnity. To the extent allowed by law, Affiliate shall indemnify, defend and hold SCOLA and its third-party suppliers, and their officers, directors, employees and agents, harmless from and against any and all third-party claims of loss, damages, liability, costs and expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from (a) a breach by Affiliate of any term of this Affiliate Agreement; or (b) Affiliate's use of the SCOLA Content, provided that Affiliate will have no indemnity obligation or other liability hereunder arising solely from the SCOLA Content as provided by SCOLA.
12. Limited Warranty and Limitation of Liability.
 - a. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE ONLINE SERVICES AND SCOLA CONTENT ARE PROVIDED "AS-IS," "WHERE-IS" AND "AS-AVAILABLE"; SCOLA MAKES NO EXPRESS OR IMPLIED WARRANTIES; AND SCOLA EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. SCOLA EXPRESSLY DENIES ANY REPRESENTATION OR WARRANTY THAT THE ONLINE SERVICES WILL OPERATE UNINTERRUPTED OR ERROR-FREE.
 - b. EXCEPT AFFILIATE'S INDEMNIFICATION OBLIGATIONS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OR LOSS OF GOODWILL, DATA OR PROFITS, OR COST OF COVER. TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF SCOLA FOR ANY REASON SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO SCOLA BY AFFILIATE UNDER THIS AFFILIATE AGREEMENT. THE LIMITS ON LIABILITY IN THIS SECTION SHALL APPLY IN ALL CASES, INCLUDING IF THE APPLICABLE CLAIM ARISES OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT PRODUCTS LIABILITY AND EVEN IF THE PARTY HAS BEEN ADVISED THAT SUCH DAMAGES ARE POSSIBLE OR FORESEEABLE.
13. Miscellaneous. This Affiliate Agreement constitutes the entire agreement between the Parties concerning its subject matter and supersedes all prior agreements and understandings, both written and oral, with respect to the subject matter of this Affiliate Agreement. This Affiliate Agreement may be amended or waived only in writing executed by both Parties. This Affiliate Agreement is binding on and inures to the benefit of the Parties and their respective successors and assigns. Affiliate may not assign any of its rights or obligations under this Affiliate Agreement without the prior written consent of SCOLA. Any breach of Section 1, 3 or 6 will cause irreparable harm to SCOLA for which damages would not be an adequate remedy, and SCOLA is entitled to injunctive relief with respect to any violation in addition to any other remedies. If any provision of this Affiliate Agreement is declared void or unenforceable, then the provision is automatically amended to the minimum extent required to make it valid, legal, enforceable and nearest to the original intent, and the other provisions remain in full force and effect. The waiver of a breach does not operate as a waiver of any subsequent breach. All notices under this Affiliate Agreement must be in writing and deemed to have been duly given (a) when delivered by hand; (b) one (1) day after delivery by receipted overnight delivery; or (c) three (3) days after being mailed by certified or registered mail, return receipt requested, with postage prepaid to the Party to the address of the Party to be noticed as set forth on page one of this Affiliate Agreement or other address as last provided to the other Party by written notice. Affiliate must not use the name, logo, trademarks or trade names of SCOLA in publicity releases, promotional material, customer lists, advertising, marketing or business-generating efforts, whether written or oral, without obtaining SCOLA's prior written consent, which consent may be withheld at SCOLA's sole discretion. This Affiliate Agreement is governed in all respects by the laws of Nebraska and the United States without giving effect to any conflicts-of-laws principles that require the application of the law of a different state and without regard to any presumption or rule of law requiring its construction against the Party drafting any part of this Affiliate Agreement. The Parties consent to the venue and personal jurisdiction of the federal or state courts in Douglas County, Nebraska as the exclusive forum for resolution of any dispute under this Affiliate Agreement and will not raise, and each waives, any defenses based on venue, inconvenience of forum, or lack of personal jurisdiction in these countries.