



Art Museum Image Consortium
www.amico.org
Enabling Educational Use of Museum Multimedia

The AMICO Library Museum Agreement

by and between the
Art Museum Image Consortium
and

The AMICO Library Museum Agreement

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The AMICO Library Museum Agreement

1. Introduction

This Agreement sets forth terms and conditions under which a museum may receive access to and use The AMICO Library™, the collective digital library of visual and documentary resources of the Art Museum Image Consortium ("AMICO"), a non-profit corporation organized under the laws of the District of Columbia. This Agreement is made and entered into as of this _____ day of _____ ("Effective Date"), by and between AMICO and _____, ("Museum Subscriber").

2. Purpose of AMICO

AMICO is operated exclusively for charitable, educational, and cultural purposes. More specifically, the purpose of AMICO is to assist its Members: (1) by compiling a collective digital library of visual and documentary resources documenting works of art ("The AMICO Library™"); (2) by providing dramatically increased educational access to the documentary resources for the benefit of institutions of higher education, museums, libraries, schools, and other charitable, educational, and cultural institutions; and (3) by fostering and promoting education and advancing knowledge in areas related to The AMICO Library™, including scholarship in the arts, humanities, informational sciences, and social sciences.

3. Definitions

"The AMICO Library™" means the compilation of AMICO Works and any materials contained therein.

"AMICO Library Museum Agreement" means the Agreement under which AMICO establishes the eligibility, rights and obligations of a museum to subscribe to and use The AMICO Library™, as provided by an Authorized Distributor.

"AMICO Work" means the catalog record and all other related multimedia documentation of a work of art in The AMICO Library™.

"Authorized Distributor" means an organization authorized by AMICO to provide access to and support services for The AMICO Library™.

"Designated User" means any person authorized to receive access to and use of The AMICO Library™ under the terms and conditions of this Agreement.

"Museum" means a non-profit organization with a mission to collect, preserve and interpret culture through exhibitions which are open to the public.

"Museum Subscriber" means a Museum authorized by AMICO to receive access to and use The AMICO Library™, through an Authorized Distributor, under the terms and conditions of this Agreement.

4. AMICO Museum Subscription

By completing enrollment and by accepting all of the terms and conditions of this Agreement, a qualified Museum becomes an AMICO Museum Subscriber, entitled to all of the benefits of and subject to all of the responsibilities of Museum Subscribers. The policies and procedures governing the qualifications, rights and obligations of Museum Subscribers are established by the Board of Directors of AMICO. Continued acceptance of all the terms and conditions is a condition of this Museum Subscription.

5. Intellectual Property

5.1 AMICO's Rights

The AMICO Library™, all of the AMICO Works contained therein, and other materials related to The AMICO Library™ are protected under US copyright law and other applicable intellectual property and proprietary information laws. The mark, AMICO LIBRARY, and other marks and tradenames used to identify The AMICO Library™ are or shall be protected by US trademark law and other unfair competition laws. Museum Subscriber hereby acknowledges that AMICO is the sole and exclusive owner of the rights described in this section.

5.2 Grant of Rights.

AMICO hereby grants to Museum Subscriber a non-exclusive, non-transferable, limited license to use, modify, reproduce, distribute, and publicly display AMICO Works for educational, research, and scholarly purposes to Designated Users under the terms of this Agreement. AMICO hereby grants to Museum Subscriber a non-exclusive, limited license to use the AMICO mark to promote the use

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of The AMICO Library™ within its Designated User community. All other uses of The AMICO Library™, AMICO Works, related AMICO materials, and the AMICO Mark requires the permission of or a separate license from AMICO, or one of its members.

5.3 Fair Use.

AMICO does not intend that the terms of this license in any way limit uses by Designated Users which are designated by the US Copyright Act, Section 107 (Fair Use).

6. Users

6.1 Designated Users.

Museum Subscriber may designate categories of users that may receive access to and use The AMICO Library™ under the terms of this Agreement. Museum staff, researchers and scholars, trustees, volunteers or docents, visitors to the museum facility, students in non-degree granting programs offered by the museum, visiting museum professionals and others officially affiliated with the Museum Subscriber may become Designated Users. The following groups may not become Designated Users: subscribers who pay fees to use museum facilities or services, museum members, museum tenants, and the members of the household of Designated Users.

6.2 Degree Granting Institutions.

Degree granting institutions officially affiliated with the Museum Subscriber may gain access to and use The AMICO Library™ by entering into a separate AMICO University Agreement.

6.3 Limited Access Privilege.

Museum Subscriber may grant the privilege of limited access to The AMICO Library™ to: (1) occasional users who are not Designated Users and who have access to computer terminals physically located on the site of and under the control and administration of the Museum Subscriber, and (2) users of the Museum Subscriber's on-line public access catalog (OPAC) and similar resources, provided that the data displayed on the Museum Subscriber's OPAC does not exceed the scope of the data displayed on the AMICO public website as set forth in the AMICO Public Web Site Specification.

7. Use For Education, Research, and Scholarship

7.1 Permitted.

Access to and use of The AMICO Library™ under this Agreement is exclusively for education, research and scholarship. More specifically, in addition to and notwithstanding any privileged use set forth in the US Copyright Act, Designated Users may receive access to and use The AMICO Library™ for: (1) classroom instruction, public lecturing, gallery talks and similar educational interpretation, (2) research, (3) student assignments, (4) display in a public gallery, including use in exhibit labels and other didactic components of the exhibit, (5) public display or public performance as part of a professional presentation at a seminar, conference, or workshop, or other such similar professional activity; (6) use in educational materials created in support of museum programs, provided these materials are not made available for sale or free distribution to the general public; (7) use in a student or faculty portfolio, including non-public display thereof, if such use conforms to the customary and usual practice in the field; and (8) incorporation into museum records as part of the on-going work of the museum (as for comparison in collection acquisition, conservation, curation).

7.2 Prohibited.

Access to and use of The AMICO Library™ under this Agreement for any and all purposes other than education, research and scholarship is prohibited. More specifically, without express authorization from the copyright holder, The Museum Subscriber and Designated Users are strictly prohibited from: (1) publishing any AMICO Work in any medium or format, (2) redistributing any AMICO Work by any means beyond the Designated User community, and (3) storing any AMICO Work, in whole or in part, beyond the term of this Agreement, unless expressly permitted. In no event may a Museum Subscriber or its Designated Users use any AMICO Work, or any adaptation thereof, in a commercial or business related manner. The Museum Subscriber, or persons acting on behalf of the Museum Subscriber, is prohibited from using any AMICO Work for fund-raising, marketing promotion, or public relations.

7.3 Required Notices.

Any and all publicly displayed AMICO Works must have: (1) any required copyright management information, such as the name of the creator of the work, the name and other identifying information of the copyright owner, terms and conditions for the uses of the work, and such other information as may be required by AMICO, (2) minimum documentation of the work of art, as outlined in the AMICO Distributor Specification and (3) an acknowledgment of the AMICO Member contributing the multimedia documentation to The AMICO Library™, except where such an acknowledgment clearly would compromise an educational objective (such as examination).

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8. Adaptations

8.1 Integrity of AMICO Works.

The Museum Subscriber must take all reasonable steps to ensure the preservation of the integrity of AMICO Works, in whole or in part, and to protect the moral rights, if any, of the creator of the underlying original work of art. Any adaptation, alteration, addition to, deletion from, manipulation, or modification (together "adaptations") of an AMICO Work, in whole or in part, must be undertaken exclusively for education, research or scholarship. The Museum Subscriber must maintain, subject to audit by AMICO, complete and accurate records of all institutionally created or systematic adaptations of AMICO Works created under this Agreement, including a record of the specific educational, research, or scholarly purpose served by the adaptation.

8.2 Prohibited Practices.

In no event may a Designated User: (1) reproduce or distribute any adaptation of an AMICO Work, in whole or in part; (2) publish any adaptation of an AMICO Work, in whole or in part, in any medium or by any means, or (3) redistribute any adaptation of an AMICO work, outside the Designated User community specified in this Agreement, in whole or in part, by any means.

8.3 Retention of Adaptations

Upon termination of this Agreement, the Museum Subscriber must certify to AMICO that any and all institutionally created adaptations of AMICO Works have been destroyed. With the exception of adaptations for student assignments and for faculty or student portfolios, Designated Users may not retain any adaptation of an AMICO Work, in whole or in part, after the termination of this Agreement. The Museum Subscriber is obligated to inform Designated Users of this provision both during the period of use, and if and when the license is terminated.

8.4 Notices Required.

In addition to any other notices required under this Agreement, any adaptation of AMICO Works, in whole or in part, must: (1) clearly identify all changes in the image and/or related documentation, and (2) set forth citations or direct links to the unadapted AMICO Work.

9. Distribution

9.1 Authorized Distribution.

Museum Subscriber may receive access to The AMICO Library™ through an AMICO authorized distributor. The Research Libraries Group, Inc. ("RLG") is an authorized distributor of the AMICO Library under RLG's "Service Agreement." The Museum Service shall be distributed by RLG on the basis of regular, published distribution schedules, subject to interruptions beyond the control of AMICO or RLG. Designated Users may use the AMICO Library at any access point that is controlled by RLG's user authentication system.

9.2 Local Mounting.

Museum Subscriber also may receive access to the AMICO Library through local delivery. When the AMICO Library is mounted locally by the Museum Subscriber it is governed by the terms of the AMICO Distributor Specification, in addition to those in this Agreement.

10. Security

10.1 Museum General Responsibilities.

Museum Subscriber is responsible for: (1) complying with all computer security procedures required by AMICO's authorized distributor, (2) monitoring, exercising control over, and certifying access to The AMICO Library™, (3) taking all other reasonable steps to ensure the security of The AMICO Library™.

10.2 Museum Policies and Procedures.

Museum Subscriber is responsible for establishing, monitoring, and enforcing controls for the proper use of The AMICO Library™, including: (1) adopting and effectively disseminating policies and procedures governing the proper use of The AMICO Library™, including appropriate sanctions for knowing and willful infringements, (2) providing instruction to all Designated Users on the proper use of The AMICO Library™, and (3) fully investigating all known infringements and taking appropriate disciplinary action in cases of knowing and willful infringements.

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11. Unauthorized Use

11.1 Museum's Responsibilities.

Museum Subscriber shall not be responsible for the unauthorized use or infringement of The AMICO Library™ by Designated Users provided that: (1) Museum Subscriber is in full compliance with the requirements of section 10 of this Agreement; (2) such unauthorized use or infringement is without the consent of the Museum Subscriber, (3) Museum Subscriber promptly notifies AMICO of any such unauthorized use or infringement of which it becomes aware; (4) Museum Subscriber takes all reasonable steps to cause such unauthorized use or infringement to cease immediately and (5) the Museum Subscriber takes appropriate disciplinary action against the Designated User. Museum Subscriber shall cooperate fully with AMICO in any investigation of such unauthorized use or infringement.

11.2 AMICO's Rights.

AMICO shall have the sole right, at its discretion, to bring any legal action because of an unauthorized use or infringement of The AMICO Library™. Museum Subscriber shall not bring any legal action in connection with an unauthorized use or infringement without first consulting with AMICO.

12. Fees and Payment

Museum Subscriber receiving access to The AMICO Library™ through AMICO's Authorized Distributor is responsible for the prompt payment of all subscription fees as defined by an AMICO schedule, based on numbers of Designated Users, certified by the Museum Subscriber. This fee, along with other applicable fees charged by the Authorized Distributor for provision of access, will be collected by the Authorized Distributor as a condition of providing that service.

13. Notices

13.1 AMICO.

AMICO may give written notices under this Agreement to Museum Subscriber by electronic mail, by a general posting to the Museum Subscriber, by facsimile transmission (with receipt confirmed), or by conventional mail. In the case of electronic or a general posting to the Museum Subscriber, notice shall be deemed to have been given on the day of the delivery of the transmission. In the case of conventional mail, notice shall be deemed to have been given on the fifth business day following the day of mailing if mailed postage prepaid. Any notice given to the Museum Subscriber will constitute notice to all Designated Museum Users.

13.2 Museum Subscriber.

Museum Subscriber must give notice to AMICO by electronic mail or conventional mail, unless otherwise specified in this Agreement. A notice by a Museum Subscriber to AMICO will not change the terms of this Agreement, or the terms of any AMICO policy or guideline, unless an authorized officer of AMICO expressly accepts the change in writing. Notices to AMICO by conventional mail must be sent to:

AMICO Subscriptions c/o
Susan Chun, AMICO Operations
The Metropolitan Museum of Art
1000 Fifth Avenue
New York, NY 10028 USA

Fax: (416) 946-8693
Email: subscriptions@amico.org

14. Representations and Warranties

14.1 General.

AMICO represents and warrants that it has the authority to enter into this Agreement. Museum Subscriber represents and warrants that it is a Museum and that it has the authority to enter into this Agreement and to perform all the obligations under this Agreement.

14.2 Intellectual Property.

AMICO warrants and represents that, to the best of its knowledge, the use of The AMICO Library™ under the terms and conditions of this Agreement shall not infringe the rights of any third party. However, the foregoing shall not apply to adaptations of AMICO Works created under Section 8 of this Agreement. AMICO makes no warranties and representations, and expressly disclaims any liability, with respect to any rights of publicity or privacy and any moral rights in AMICO Works and other materials in The AMICO Library™.

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15. Indemnification

15.1 AMICO.

To the extent authorized by law, AMICO shall defend and indemnify Museum Subscriber, its employees, officers, and directors against any claim or action brought against Museum Subscriber arising out of (1) AMICO's breach of any term or condition of this Agreement; (2) any third party claim for infringement or other violation of any third party's intellectual property right or proprietary rights in connection with Museum Subscriber's authorized uses under this Agreement except with respect to adaptations of AMICO Works created under Section 8 of this Agreement. With respect to any such claim or action, AMICO shall pay any costs, damages, reasonable attorney's fees or other expenses incurred by the Museum Subscriber.

15.2 Museum Subscriber.

To the extent authorized by law, Museum Subscriber shall defend and indemnify AMICO, its employees, officers, and directors against any claim or action brought against AMICO in connection with (1) Museum Subscriber's breach of any term or condition of this Agreement, and (2) Museum Subscriber's unauthorized use of The AMICO Library™, and (3) Designated Users' unauthorized uses of The AMICO Library™ if known to the Museum Subscriber but not acted upon by the Museum as specified in sections 10.2 and 11.1 of this agreement. With respect to any such claim or action, Museum Subscriber shall pay any costs, damages, reasonable attorney's fees or other expenses incurred by AMICO.

16. Reporting Requirements

16.1 Local Mounting

The Museum Subscriber must report, on an annual basis, all AMICO Works mounted locally for use by Designated Users.

16.2 Use Studies.

The Museum Subscriber is urged to share with AMICO data from all use studies conducted with The AMICO Library™.

16.3 Policy on Licensed Resources.

The Museum Subscriber must provide AMICO with a copy of its policies on the use of licensed resources, and its procedures for acting against known infringements.

17. Withdrawal of Works from The AMICO Library™

17.1 Withdrawal of AMICO Works.

AMICO may withdraw specific AMICO Work(s) from The AMICO Library™ for good cause shown. Any claim, dispute, or action related to contributed multimedia documentation by an AMICO Member shall be deemed to establish good cause for the removal of such a work. The Museum Subscriber shall withdraw disputed AMICO Work(s) from institutionally managed local storage within ten (10) days following the date of notice by AMICO requesting such removal.

18. Term and Termination

18.1 Term.

This Agreement shall come into force on the Effective Date and shall remain in effect through the end of the subscription year as defined by the Authorized Distributor. This Agreement shall automatically be extended for successive terms provided that the annual subscription fees are paid and no notice of change of terms is given by AMICO.

18.2 Termination.

AMICO may terminate this Agreement upon at least thirty (30) days' prior written notice to the Museum Subscriber because of any failure of the Museum Subscriber to perform or observe any material term, agreement or warranty, or if any representation contained herein is false. The failure of the Museum Subscriber to report any infringement of which it becomes aware shall be deemed to be a material breach of this Agreement. However, the failure of a Designated User to perform or observe any material term or condition of this Agreement shall not in itself be grounds for termination provided that the Museum Subscriber is discharging its responsibilities under section 11 of this Agreement.

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18.3 Conduct Upon Termination.

Upon termination of this Agreement for any reason, Museum Subscriber shall promptly notify all Designated Users that The AMICO Library™ subscription has been terminated and shall promptly remove all AMICO Works and AMICO Library materials from museum networks and computers. Museum subscriber shall promptly erase or destroy all institutionally created and/or managed copies of AMICO materials fixed in any physical medium, including prints, slides, and compact disks to provide certification to AMICO of their destruction.

19. Miscellaneous Provisions

19.1 Entirety of the Agreement

The terms and conditions of this Agreement supersede all prior oral and written Agreements between the parties with respect to the subject matter of this Agreement and shall constitute the entire Agreement between the parties with respect to the matters contained herein. This Agreement shall not be modified or amended except by writing duly executed by authorized representatives of the parties.

19.2 Choice of Law.

This Agreement will be interpreted, governed, and enforced under the laws of the State of New York, without regard to its conflict of law rules. Any claims or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration to be held in New York City in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

19.3 No Assignment.

The Parties to this Agreement shall not assign, subcontract, or sublicense this Agreement or any of the rights and obligations thereunder.

IN WITNESS THEREFORE, the Parties have caused this Agreement to be executed as the first day and year written first above.

Art Museum Image Consortium

[Museum Subscriber Name]

Susan Chun, AMICO Operations

[Print Representative Name and Title]

[Signature]

[Representative Signature]

[Date]

[Date]