



AMICO Library Distribution Agreement

Between

The Art Museum Image Consortium (AMICO)

and

AMICO LIBRARY DISTRIBUTION AGREEMENT

This Agreement is entered as of the ___ day of _____, ____ by and between:

Art Museum Image Consortium, Inc. ("AMICO) notices for which should be sent to the address shown below or to such address as AMICO may inform Distributor of in writing;

Executive Director
Art Museum Image Consortium (AMICO)
2008 Murray Ave., Suite D
Pittsburgh, Pennsylvania, 15217

and _____, with offices at _____, a _____, ("Distributor"), notices for which should be sent to the address shown below or to such address as Licensor may hereafter inform AMICO of in writing.

WHEREAS, the Distributor is a [type of organization] and desires to provide [name of user group], with access to digital multimedia documentation of works of art for their educational use, and

WHEREAS, the AMICO is a not-for-profit consortium with the purpose of enabling educational use of a compilation of multimedia documentation of works of art, known as The AMICO Library™, and

Whereas the parties wish to make The AMICO Library™ available to for users and uses served by the Distributor,

NOW, THEREFORE, the parties agree as follows:

Definitions:

AMICO Data Specification. The formal, abstract, description of AMICO data types and values is contained in an annually updated document called the AMICO Data Specification, available online, linked to <http://www.amico.org/>.

AMICO Library Agreement(s). Contracts to use the AMICO Library are collectively known as AMICO Library Agreements. These include trial access agreements, subscription agreements, development and distribution agreements, and may also be collectively referred to as License(s). These Agreements are administered by AMICO; texts are available at <http://www.amico.org>

AMICO Library Edition. The AMICO Library™ is issued in numbered annual editions. AMICO Works may be included in, or withdrawn from, the Library Edition, only as provided for in the Distribution Agreement.

AMICO Library Year. July 1 of the year corresponding to the AMICO Library Edition number to June 30 of the following year, is the period for which rights are licensed to each annual edition of The AMICO Library™.

AMICO Mark

Any graphic image, logotype or text string used to identify the Art Museum Image Consortium, Inc., including its acronym, AMICO.

AMICO Library. The sum of all AMICO Works, plus the indexing and knowledge structuring metadata created by AMICO.

AMICO Library Mark

Any graphic image, logotype or text string used to identify the AMICO Library, including its name "The AMICO Library™".

AMICO Member. Institutions with collections of art that belong to AMICO. AMICO's membership at any time is a matter of record maintained on its Web site <http://www.amico.org>. Each institution that is a member of AMICO may contribute works of art to the AMICO Library.

AMICO Works. The sum of all multimedia documentation and text representing a work of art that is linked through mutually referencing digital files in the AMICO Library.

Authorized Users. A defined class of people who may, under the terms of an AMICO Agreement, be licensed to have access to the AMICO Library.

Distribution System. The application systems that manage the data, and online access to the data, that are provided and maintained by the Distributor and through which Licensed Users may use The AMICO Library™.

License Fee(s). The License Fee is an amount set by AMICO each AMICO Library Year as the charge to each class of Licensees for the right to use The AMICO Library™. The License Fee does not include the Service Fee.

Licensed User. A member of the class of Authorized Users for whom a current AMICO Agreement (License) is in effect.

Licensee. Any legal entity with a current AMICO Agreement, is a Licensee and may obtain access to The AMICO Library™ for the term of its license through a Distributor(s) of its choice.

Service Fee. The charge made by a Distributor for its services in providing service and support relating to use of its Distribution System. The Service Fee does not include the License Fee, though they may be billed at one time within a single subscription charge.

Section 1. LICENSE TO ELECTRONIC CONTENT

1.1 Distributor's rights.

This Agreement provides Distributor a limited and non-exclusive license to market The AMICO Library™ and gives Distributor right enter into contract with any Licensee to obtain subscription access to The AMICO Library™ through the Distribution System and a limited and non-exclusive license to use the AMICO names for limited purposes as provided herein.

Section 2. OBLIGATIONS OF AMICO

- 2.1 *Obtain and Maintain Rights.* AMICO is responsible for ensuring that rights to all parts of AMICO Works are licensed to AMICO either by its Members, a Rights Society representing the creators of the work of art, or other parties possessing relevant intellectual property rights.
- 2.2 *Report AMICO Members.* AMICO will notify Distributor of any changes in AMICO Membership at the time they occur. AMICO Members are Licensees.
- 2.3 *Report Licensees.* Licensees have the right to obtain service through any AMICO Distributor. AMICO will notify Distributor at the time that each License is issued and will maintain a current list of all Licensees online.
- 2.4 *Provide Notice of AMICO License Fee(s).* AMICO shall set the License Fee applicable to any AMICO Library year and notify the Distributor of such fees at least 120 days before the start of each year.
- 2.5 *Provide Notice of AMICO Data Specification Changes.* The AMICO Data Specification, which governs the technical specifications for all AMICO Library content, is linked to <http://www.amico.org/>. It is subject to annual updating. AMICO shall notify the Distributor of any updates that will govern future distributions at least 90 days in advance of their taking effect.
- 2.6 *Provide Initial AMICO Library™.* AMICO shall supply to the Distributor the complete AMICO Library™ as of the date of the signing of this Agreement. The AMICO Library™ will be delivered to the Distributor in the format and by the method defined by the Distributor Specification no later than 30 days after execution of this Agreement.
- 2.7 *Provide AMICO Library Edition.* Additions of new AMICO Works to The AMICO Library™, required to construct the next annual AMICO Library Edition, shall be delivered to the Distributor on or before 1 May of each year.
- 2.8 *Provide Quarterly Updates.* Following initial delivery of The AMICO Library™ to Distributor by AMICO, quarterly updates of additional images and multimedia documentation of AMICO Works already in the AMICO Library may be made available to Distributor by October 1, January 1, and April 1 of any year.
- 2.9 *Provide Weekly Updates to AMICO Works.* AMICO provides weekly updates to the (textual) catalog records and/or metadata records in the Library by the method defined in the Distributor Specification.

- 2.10 *Provide Notice of AMICO Distributor Specification Changes.* The AMICO Distributor Specification, which governs the functionality and content of applications for distribution of The AMICO Library™, and is part of this Agreement, is published at <http://www.amico.org/>. It is subject to updating. The Distributor will be notified of any updates that govern future distributions at least 90 days before the updates take effect.
- 2.11 *Provide Notice for Deletion of AMICO Works.* AMICO may from time to time require that certain AMICO Works or their parts be removed from The AMICO Library™ for reasons of copyright claims or for other reasons that in the judgment of AMICO are meritorious claims. In such cases, Distributor and AMICO agree that AMICO will promptly notify Distributor so that the Distributor can promptly withdraw such AMICO Works or their parts from The AMICO Library™.

Section 3. OBLIGATIONS OF DISTRIBUTOR

3.1 *Maintain a Distribution System and Service*

- 3.1.1 *Distribution System.* The Distributor will provide Licensed Users access to a Distribution System that satisfies the requirements of the AMICO Distributor Specifications.
- 3.1.2 *Availability Of Service.* The Distribution System will provide access to The AMICO Library for Licensed Users, 24 hours a day every day of the year (with limited exceptions provided in service agreements between the Distributor and Licensee as required by scheduled maintenance and emergencies).
- 3.1.3 *User Support.* The Distributor will provide some mechanisms to assist Licensed Users at all times, including human support services during reasonable business hours.
- 3.1.4 *Discontinuation of Service.* Should Distributor decide to discontinue offering The AMICO Library™ to any of its current Licensees, Distributor will notify AMICO at least 4 months in advance and provide AMICO such information as is necessary to arrange a smooth transition for Licensee to a new Distributor. In no case will service be discontinued on a date that falls during a Licensee's current academic year.

3.2 *Network System Security*

- 3.2.1 *Maintaining Security.* Distributor recognizes that maintaining the integrity of The AMICO Library™ and ensuring that use of The AMICO Library™ is limited to Licensed Users are important obligations, and that AMICO may terminate this Agreement if it believes repeated violations of these security principles and/or AMICO's intellectual property rights are occurring and Distributor has not acted effectively to prevent future abuses.
- 3.2.2 *Licensed Users.* Distributor agrees to limit access to The AMICO Library™ to Licensed Users, subject to user authentication as outlined in the Distributor Specification.
- 3.2.3 *Declaration of Security Mechanisms and Notification of Changes in Security System.* The Distributor agrees to provide to AMICO documentation, in writing, of the actual security mechanisms that it uses to ensure access to The AMICO Library™ is permitted only to Licensed Users. Specific measures used may be changed, provided the Distributor notifies AMICO, and AMICO does not object in writing within 15 business days.
- 3.2.4 *Notification of Security Violations.* Distributor will immediately report to AMICO any possible violations of security regarding The AMICO Library™.
- 3.2.5 *Enforcement of Security Policies.* Distributor will cooperate with AMICO in enforcing policies against violators of AMICO license terms, or those who make unauthorized use of the AMICO Library.

3.3 *Maintaining the Currency of The AMICO Library™.*

- 3.3.1 *Updating Catalog Information.* Distributor acknowledges that The AMICO Library™ content is undergoing continuous change, and that AMICO provides weekly updates to the catalog records in the Library, according to methods described in the AMICO Distributor's Specification. Distributor agrees to update the data it distributes on a regular basis, not more than ten (10) days after the updates have been provided by AMICO.
- 3.3.2 *Deleting AMICO Works or parts thereof.* Distributor acknowledges that AMICO may from time to time require that certain AMICO Works or parts thereof be removed from The AMICO Library™. In such cases, Distributor will, within ten (10) days of notification by AMICO, take the steps necessary to prevent access by Licensed Users to the identified AMICO Works or parts thereof.
- 3.3.3 *Updates to AMICO Works.* AMICO may provide the Distributor with quarterly updates to The AMICO Library™, including to images and multimedia files. The Distributor agrees to make added material available to Licensed Users no later than thirty (30) days after it is provided by AMICO.
- 3.3.4 *Adding AMICO Works.* No later than 60 days prior to the start of a new AMICO Library Year, AMICO will provide the Distributor with new content to be added to The AMICO Library™, including new AMICO Works. The Distributor agrees to make added material available to Licensed Users no later than sixty (60) days after it is provided by AMICO.

- 3.3.5 *Annual Edition.* Distributor agrees to only provide access to the designated edition of the AMICO Library from July 1 of the AMICO Library Edition year to June 30 of the subsequent year.
- 3.4 *Access for AMICO and AMICO Member Institutions.*
- 3.4.1 *Access for AMICO.* Distributor will provide access free and unlimited to the AMICO Library for AMICO staff and contractors.
- 3.4.2 *Access for AMICO Members.* Distributor will provide free and unlimited access to the AMICO Library for each AMICO Member.
- 3.4.3 *Mechanisms for Access.* Distributor will report mechanisms for access to AMICO contact and AMICO Member contacts and notify of any changes at least 72 hours in advance of their taking effect.
- 3.5 *Analysis and Reporting.*
- 3.5.1 *Use Data.* Collection and analysis of use data will assist both AMICO and Distributor to understand the impact of this overall Agreement, the infrastructure provided by Distributor, and possible improvements in the program. Usage data defined by the Distributor Specification will be compiled by Distributor, consistent with applicable privacy laws and written confidentiality requirements of the parties, and will be made available to AMICO monthly.
- 3.6 *Notices to Users*
- 3.6.1 *Notice of license terms.* The Distribution System shall display appropriate notices informing Authorized Users and members of the public of their obligations under the AMICO License and of the applicability of United States Copyright Act to The AMICO Library™.
- 3.6.2 *Embedded Notices.* Distributor shall not remove, alter, modify, cover or distort any copyright notice, trademark, or other proprietary rights notice placed by AMICO in the Licensed digital media.
- 3.6.3 *Trademarks.* Distributor acknowledges and agrees that AMICO owns and shall own all rights in and to the trademark “AMICO Library” or such other mark(s) as AMICO elects to use to identify The AMICO Library™ that is the subject of this Agreement (the “Library Mark”). AMICO hereby grants Distributor a non-exclusive license to use the Library Mark in connection with development and distribution of and service with respect to The AMICO Library™ (and the promotion and marketing thereof), consistent with the terms of this Agreement. AMICO has the sole right to determine if a use of The AMICO Library™ Mark is permissible.
- 3.7 *Ownership.* Distributor acknowledges and agrees that as between Distributor and AMICO, title to The AMICO Library and all applicable copyrights, trade secrets, patents, and other intellectual property rights in The AMICO Library™ is and will be vested in AMICO. AMICO acknowledges and agrees that as between AMICO and Distributor, title to (i) the software and systems Distributor has developed, will develop, and will employ for the distribution, access, and servicing of The AMICO Library™ and (ii) all applicable copyrights, trade secrets, patents, and other intellectual property rights in such software and systems (excluding AMICO’s before-mentioned rights in The AMICO Library™) is and will be vested in Distributor. AMICO further agrees that Distributor may license, to AMICO Licensees, any rights in such software and systems, including rights to their use in conjunction with The AMICO Library™.
- 3.8 *Use of Name.* Distributor and AMICO shall each provide the other with samples of its advertising and other promotional materials that bear any of the others’ trademarks, for the trademark owner to determine whether its trademarks are being used properly and in accordance with this Agreement. Each party agrees that its use of the other party’s trademarks shall inure to the benefit of the owner, and that the Distributor shall obtain no rights thereto except the license granted herein. Distributor and AMICO shall each employ such legends and notices regarding intellectual property and the proprietary nature of such property, in such manner as reasonably requested by the other party in connection with the performance of its obligations hereunder. Distributor and AMICO shall not use the name of the other for publicity, marketing or the like, except in accordance with this Agreement.
- 3.9 *Access to The AMICO Library™ by Distributor’s Staff.* AMICO agrees that employees of the Distributor, including contractors retained by the Distributor, shall, during the term of this agreement, have access to The AMICO Library™ as needed for the purposes of maintaining a Distribution System for The AMICO Library™ and serving Licensees thereto, including the right to demonstrate the AMICO Library to potential subscribers as needed for promotion of The AMICO Library™ Distribution Service. Distributor’s staff, including contractors, shall have no other rights with respect to The AMICO Library™ unless they are also Licensed Users under an approved AMICO License.

Section 4. CONFORMANCE TO AMICO DISTRIBUTOR SPECIFICATION

- 4.1 *Initial Acceptance.* Distributor shall provide AMICO access to the Distribution System when it is first developed, and before Licensed Users are provided access to it on a regular basis, in order to permit AMICO to verify its conformance to the AMICO Distributor Specification. AMICO shall note any defects within two weeks of being given such access, and Distributor shall correct any defects identified by AMICO prior to making the system available for Licensed Users.
- 4.2 *On-going Maintenance.* The Distribution System provided by the Distributor will at all times conform to the requirements of the AMICO Distributor Specification, except as specifically accepted in advance, and in writing, by AMICO.

Section 5. FEES

- 5.1 *Distribution fees.*
- 5.1.1 *Fee for Being a Distributor.* The AMICO charges no fee to the Distributor for its role in Distributing The AMICO Library™
- 5.1.2 *Fees for Media sent to Distributor.* Distributor agrees to pay a media fee, representing the actual cost to AMICO of creating copies of The AMICO Library™ on media, plus shipping and handling, upon receipt of invoices accompanying data provided by the AMICO. If the Distributor returns media to the AMICO within one month of receipt thereof, no fees will be assessed.
- 5.2 *Collection of, and Accounting for, Fees.*
- 5.2.1 *License fees.* Distributor agrees to collect and pay to AMICO the AMICO License Fee due from all licensees receiving The AMICO Library™ through the Distributor's system (including, if applicable, the Distributor's own institution, as a licensee). License Fees are due at AMICO within 30 days of the start of a Subscription by the Distributor.
- 5.2.2 *Service Charges to Licensees.* Distributor agrees not to charge subscribing institutions, in the aggregate, a Service Fee for access to The AMICO Library™ that exceeds the sum of annual License Fee collected by the Distributor for AMICO.
- 5.2.3 *Most Favored License Fee Provision.* The Distributor is entitled to receive The AMICO Library™ for Licensees subscribing to its services at the lowest fee available to others. Hence, if AMICO agrees to reduce fees for any class of Licensees at any time during the term of this agreement, such a reduction will be offered to the Distributor. If the Distributor agrees to assess Licensees on such a reduced cost basis, then the Distributor's Service Fee must also be reduced if required to satisfy clause 5.2.2 above.
- 5.2.4 *Accounting.* Total income from each subscription (including AMICO License Fee and Distributor's Service Fee) must be reported to AMICO on an annual basis and is subject to audit by AMICO appointed auditors.
- 5.2.5 *Additional Fees.* No additional fees shall be paid under this Agreement unless agreed upon in advance by the Parties in writing.
- 5.3 *Discontinuation of Service.* Should Distributor decide to discontinue offering The AMICO Library™ to any of its current Licensees, Distributor is responsible for refunding to Licensees any fees that it has collected and is obligated under terms of its contracts to refund, in addition to other obligations as set forth in this Agreement.

Section 6. TERM AND TERMINATION

- 6.1 *Term.* The term of this Agreement shall be for _____ months, beginning _____, unless terminated by either party for breach of any of the material obligations under this Agreement. Upon request of the Distributor, received by the AMICO at least six (6) months before the expiration of such term, the Distributor may renew this Agreement on the terms and conditions then in effect.
- 6.2 *Termination.* Either party may terminate this Agreement at any time on the material or persistent breach by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach forthwith and provides written notice of such remedy to the other party. The right of either party to terminate this Agreement shall not be affected in any way by its waiver of or failure to take action with respect to any previous breach.
- 6.3 *Effect of Termination.* Upon termination of this Agreement, Distributor shall, within thirty (30) days, deliver to AMICO certification that through its best efforts, Distributor has destroyed the original and all copies of The AMICO Library™ received from AMICO or made under this Agreement and that it has ceased to provide all access to The AMICO Library™.

Section 7. REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND INDEMNITIES

7.1 *AMICO Warranties and Obligations*

- 7.1.1 *Rights.* AMICO warrants to Distributor that all rights licensed to Licensees have been obtained prior to incorporating works into The AMICO Library™.
- 7.1.2 *Third Party Claims.* AMICO warrants that AMICO has not received, and is not aware of any claim of infringement by a third party with respect to The AMICO Library™ as of the date hereof. If a third party claims that The AMICO Library™ or any digital image therein infringes its copyright, AMICO will promptly notify Distributor of such claim. If a third party claims that The AMICO Library™ or any AMICO Work therein infringes its copyright, AMICO will defend Distributor against that claim at AMICO's expense and pay all damages that a court finally awards, provided that Distributor promptly notifies AMICO in writing of such a claim, and allows AMICO to control, and cooperates with AMICO in, the defense or any related settlement negotiations.
- 7.1.3 *Workmanship.* AMICO warrants to Distributor that the media containing The AMICO Library™ delivered to Distributor is free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of original delivery to Distributor. If a defect in such media appears during this 90 day period, the defective media may be returned to AMICO, and AMICO will replace it without charge to Distributor. This shall constitute Distributor's sole and exclusive remedy for a breach of the warranty set forth in this paragraph.
- 7.1.4 *Technical Consultation Agreement.* AMICO will provide reasonable technical consultation to Distributor to facilitate the loading of and maintenance of The AMICO Library™.

7.2 Distributor Warranties and Obligations

- 7.2.1 *Rights.* Distributor warrants to AMICO that all rights to the software and systems for the distribution, access, servicing and security of The AMICO Library have been obtained and are maintained during the term of this Agreement.
- 7.2.2 *Third Party Claims.* Distributor warrants that it has not received, and is not aware of any claim of infringement by a third party with respect to the software and systems for the distribution, access, servicing and security of The AMICO Library as of the date hereof. If a third party claims that the software and systems provided by Distributor under this Agreement infringes its copyright or other right, Distributor will promptly notify AMICO of such claim and will defend AMICO against that claim at Distributor's expense and pay all damages that a court or settlement finally awards, provided that AMICO promptly notifies Distributor of such claim and allows Distributor to control, and cooperates with Distributor in, the defense or any related settlement negotiations.
- 7.2.3 *Workmanship.* Distributor warrants to AMICO that the service and systems provided pursuant to the AMICO Distributor Specifications, made a part of this Agreement, are free from defects in materials and workmanship for the term of this Agreement.

7.3 *Disclaimers.*

- 7.3.1 *AMICO.* Notwithstanding the foregoing, however, AMICO will not be responsible for any claim, loss or liability attributable to errors, inaccuracies or other defects in The AMICO Library™ or any part thereof arising from any act or omission or (to the maximum extent permitted by relevant laws) any negligence and BOTH PARTIES EXPRESSLY EXCLUDE ANY LIABILITY FOR BREACH OF ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, save that AMICO will replace any defective media delivered by it to Distributor under this Agreement.
- 7.3.2 *Distributor.* Distributor shall not be liable to AMICO for breach of the terms of this Agreement by any Licensed User so long as Distributor followed reasonable commercial practices and did not intentionally assist in or encourage such breach or permit such breach to continue after having actual notice thereof.

Section 8. PROPRIETARY NOTICES AND TRADE MARKS

- 8.1 *Cooperation in Development of Promotional Materials and Programs.* The parties will co-operate to develop materials and programs to be used in promoting The AMICO Library™ as offered by the Distributor. The parties agree that neither of them will make any official press release or other formal publicity relating to the subject matter of this Agreement without first obtaining in each case the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. Any description of The AMICO Library™ in such materials shall be subject to prior approval of AMICO.

9.1 *Use of Name and Trademarks.* Distributor hereby grants to AMICO and AMICO grants to Distributor a limited and non-exclusive, non-transferable license to use the trade mark(s) listed on the attached Schedule # and incorporated herein, provided that such use will be solely for informational and promotional purposes connected with this Agreement. Each party will display the other's trademark(s) only in such a form and manner as will be specifically approved by the other party. Accordingly, all materials in any medium bearing a party's trademark(s) will be submitted for such party's approval, provided, however, that the absence of written approval or disapproval after thirty (30) days following such submission will be deemed approved. Each party recognizes the value of the goodwill associated with the trade mark(s), and acknowledge that such goodwill belongs and will be accrue exclusively to the party that owns such trademark(s). All rights in the trade mark(s), other than those specifically granted herein, are reserved by each party, and neither will acquire any rights in the other party's trademark(s) by virtue of any use it may make thereof. Upon the expiration or termination of this Agreement for any reason, all rights in the trademark(s) will automatically revert to their respective owner, and no further use may be made of the other party's trademark(s).

Section 9. INITIAL DELIVERY AND ACCEPTANCE

9.2 *Delivery.* AMICO shall initially deliver The AMICO Library™ according to the AMICO Distributor Specification. The AMICO Library™ shall be deemed 'Delivered' upon confirmed delivery by courier service.

9.3 *Acceptance Period.* Distributor shall have up to sixty (60) days following initial delivery of The AMICO Library™ (the "Acceptance Period") to evaluate The AMICO Library™. Prior to the end of the Acceptance Period, The AMICO Library™ shall be available only to previously agreed members of the authorized user community for evaluation purposes. If Distributor gives AMICO notice during the Acceptance Period that any part of the delivered materials forming The AMICO Library™ are unsatisfactory for any reason, or fail to substantially conform to the requirements set out in the AMICO Data Specification, and AMICO fails to replace the unsatisfactory materials or cure the defect within 30 days after notice, then Distributor shall have the right to terminate this Agreement.

9.4 *Acceptance Date.* Acceptance shall occur (the "Acceptance Date") upon the earlier of a written notice of Acceptance from Distributor to AMICO, or the end of the Acceptance Period. Upon the Acceptance Date, an acceptance period shall be deemed complete for the purposes of this Agreement.

Section 10. CONFIDENTIALITY

10.1 *Confidentiality Obligation.* During the term of this Agreement each party may receive confidential information of the other party, including without limitation proprietary information, inventions, trade secrets, confidential know-how and other technical, business and operational information related to the development or provision of The AMICO Library™ or to the businesses of the parties. Except as otherwise transferred in accordance with the terms of this Agreement, all confidential information will remain the exclusive property of the disclosing party and neither party may disclose any confidential information of the other party to any third party for any reason without the prior written consent of such other party, nor to any of such party's employees or staff other than those who have a need to know in order to provide the services contemplated by this Agreement.

10.2 *Employees.* Distributor agrees that it will not directly solicit, offer employment to, hire, interfere with or endeavor to hire away from AMICO any current employee who is involved in providing services under this Agreement.

10.3 *Survival of Confidentiality Obligation.* The parties acknowledge and agree that the obligation to respect confidentiality of the other's confidential information will survive any expiration or termination of this Agreement.

Section 11. LIMITATIONS OF LIABILITY

11.1 *AMICO Liability to Distributor.* Except for liabilities arising from intellectual property infringement or intentional negligence as provided for in Section 7 of this Agreement, AMICO's liability to Distributor shall in no case exceed the amount of the license fees paid by Distributor to AMICO hereunder. In no event shall AMICO be liable for incidental, special, or consequential damages suffered by Distributor, even if it has previously been advised of the possibility of such damages.

11.2 *Distributor's Liability to AMICO.* Except for liabilities arising from intellectual property infringement as provided for in Section 7 of this Agreement, or intentional negligence of Distributor or its agents, Distributor's liability to AMICO shall in no case exceed the amount of the license fees paid by the Distributor to AMICO

hereunder. In no event shall Distributor be liable for incidental, special, or consequential damages (including lost profits) suffered by AMICO, even if it has previously been advised of the possibility of such damages.

11.3 *Liability of Infringers.* Nothing in this Agreement shall prevent AMICO from pursuing any and all legal remedies that may be available to it against any person not a party to this Agreement.

Section 12. GENERAL

12.1 *Force Majeure.* AMICO's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes or work stoppage, fires, floods, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.

12.2 *Insurance.* Distributor agrees to keep in force and effect insurance coverage through a reputable insurer in such amounts as are adequate to satisfy the performance of Distributor's obligations under this Agreement.

12.3 *Severability.* In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions have never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

12.4 *Choice of law.* The parties agree to remain silent on choice of law.

12.5 *Assignment.* Neither this Agreement nor any of the rights under it may be assigned by either party without obtaining the prior written consent of the other party.

Section 13. NOTICES

13.1 *Valid Notice.* All notices required to be given under this Agreement shall be given in writing in English and sent by electronic mail, fax or first class registered or recorded delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and all such notices shall be deemed to have been received (a) 24 hours after successful transmission in the case of electronic mail or fax; (b) seven (7) days after the date of posting in the case of first class registered or recorded delivery.

IN WITNESS WHEREOF, the parties have set their hands as of the date first written above.

(AMICO)

DISTRIBUTOR

J. Trant
Executive Director

Appendix A.

AMICO Distributor Specification

This AMICO Distributor Specification, which governs the functionality and content of applications for distribution of The AMICO Library™, is published at <http://www.amico.org/>. It is subject to updating. This version of the Specification is current as of the date of the signing of this Distributor Agreement.

Appendix B

Data Specification

The AMICO Data Specification, which governs the technical specifications for all AMICO Library content, is published at <http://www.amico.org/>. It is subject to annual updating and the Distributor will be notified of any updates which will govern future distributions at least 90 days in advance of their taking effect.

Appendix C
Schedules and Fees

Fee Schedule for The AMICO Library™ 2001 (July 1, 2001 – June 30, 2002)

The Distributor Agrees to remit to AMICO the annual License Fee on the following basis:

Licensee class:	Fee basis unit:	Fee per unit:
University	Number of Undergraduates*	\$0.25
Public Library	Number of Card Holders	\$0.01
K-12 School	Number of Students	\$0.10
Museum, Archives, Research Institute or Historical Society	Annual Budget	\$2,500 for budgets <\$5M \$3,500 for budgets \$5M-\$10M \$5,000 for budgets >\$10M
Independent Scholar	Individual	\$100

Consortia of Licensees collectively contracting with Distributor for service.

AMICO agrees to accept a reduced license fee from Distributor (reflecting lower license fees collected from Licensees), where Distributor offers a discounted Consortial subscription. The discount accepted by AMICO should be in proportion to the extent that the Distributor discounts its standard service fee, within the following limits. The Consortial discount for The AMICO Library™ may range from 20-50% off the full price. The amount of the discount may be calculated on the percentage of participating eligible** institutional members of the consortium AND/OR on the number of users (based on undergraduate FTE equivalents) represented by participating eligible members***.

Discount	EITHER	OR
Rate	FTE equivalents **	% Participation *
20%	<99,999	< 50%
30%	100,000 - 499,999	50 - 69%
40%	500,000 - 999,999	70 - 99%
50%	1,000,000+	100%

*Graduate-only institutions count graduate students instead of undergraduates.

** Eligible consortium members are those that are non-profit, educational institutions in one of four categories: higher education, K-12, public library, museum or research organization. Consortium members already subscribing to AMICO that choose not to participate in this consortial purchase are excluded from user counts and percentage of participation calculations.

*** The FTE equivalent is determined by adding the following:

The number of higher education undergraduates x 1.0

The number of K-12 students x 0.4

The number of public library cardholders x 0.04

AMICO Members

Distributors are required to provide access to AMICO members without charge.

Appendix D
Public Web Site Specification

<http://www.amico.org/docs/pub.cat.spec.pdf>

Appendix E

Trademarks

Service Marks and Style Guide for AMICO and the AMICO Library

The AMICO Trademarks:

- AMICO, The AMICO Library and other such marks used in print and electronically to identify AMICO and its products are trademarks of Art Museum Image Consortium.

The AMICO Name:

- The first use of AMICO in a document should be as such:
Art Museum Image Consortium (AMICO)
- Subsequent uses within the same document may use either Art Museum Image Consortium or AMICO singularly.


The AMICO Library Name:

- The compilation of Member-contributed data and images is known as the AMICO Library™. The first use of the AMICO Library within a document should refer to it in this manner with the trademark designation included.
- When the AMICO Library stands alone, not within the text of a sentence, the T in *the* should be capitalized.
Example 1: The AMICO Library™
- Subsequent use within the same document should still refer to the AMICO Library – not the AMICO Art Library or AMICO Image Library or some permutation – but the ™ is not necessary.

The AMICO Logo:

- The AMICO logo, shown below, should be used with the full organization name and web address when using it as an identifier in letterhead (see Example 2).
- If placing on the Web it may be used alone, provided that the full name (Art Museum Image Consortium) and web address (<http://www.amico.org> or www.amico.org) is indicated on the page as well.
- The logo should appear no larger than 3 in wide by .5 in high (7.8 cm x 1.3 cm) and no smaller than 1.125 in wide by .25 in high (2.7 cm x .5 cm)



1. **Example 2:**  (Name and web address are centered below the logo and proportionate to logo's size.)

The AMICO Tagline (Service Mark):

- The AMICO tagline typically appears at the bottom of AMICO letterhead as such:

Enabling Educational Use of Museum Multimedia

- The line is italicized and each word is initially capped expect for of.
- The line may also be integrated into sentences that discuss AMICO's mission.
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Example 3:

The Art Museum Image Consortium seeks to enable educational use of museum multimedia by making the AMICO Library available to university-level and elementary and secondary-level schools via an annual subscription.

The AMICO Font:

- AMICO preferred serif font is Adobe Garamond (Agaramond) and its preferred sans-serif font is Helvetica.