

CLIENT AGREEMENT

FORM A

This agreement ("Agreement") is entered into on the ____ day of _____, 2007, and is made by and between _____ ("Client"), and Bowling Green State University, doing business as Bowling Green State University Information Technology Services - Digital Services (alternatively referred to herein as either the "ITS-DS" or the "University"). The Client and ITS-DS may be referred to herein as the "Parties" and each may separately be referred to as a "Party".

The Parties agree to as follows:

1.0 LICENSE

1.1 Limited License – In accordance with, and subject to, the terms and conditions of this Agreement, the Client grants ITS-DS a limited non-exclusive world-wide license to digitize, copy, retrieve, load, save and electronically display the works listed in Section 1.2 ("Works"). Pursuant to this license ITS-DS may --

- (a) load the Licensed Works on ITS-DS's server and make such back-up copies of the Works as are reasonably necessary for archival and security purposes;
- (b) provide Authorized Users, in accordance with the terms and conditions of this Agreement, with access to the University's computerized and integrated data and asset database that will store digitized images of the Works and provide for access to such images through an integrated index and sorting system by author, artwork title, and/or keywords (hereinafter the "BGSU Digital Media Resource Center (DMRC)"); and
- (c) display, download or print the Works for the purpose of marketing, testing, and training dealing with the BGSU DMRC.

1.2 Retention of Rights by Owner – This Agreement and license granted herein do not restrict or otherwise limit the rights of the Client to sell, license, display, reproduce, disseminate, or otherwise publish the Works. With the exception of the license granted in Section 1.1, and as further limited by the restrictions set forth in this Agreement, the Client hereby reserves all other right, title and interest in and to the Works.

2.0 WORKS

2.1 Description – The license granted to ITS-DS under Section 1.0 is further limited to the following described Works (check all that apply):

WORKS

Digital Images Quantity _____

Identifier/Description: Please download and complete the **Asset List** prior to submitting your images. Save the completed form to the CD on which you saved your images.

Slides Quantity _____

Identifier/Description: Please download and complete the **Asset List** prior to submitting your images. Save the completed form to a CD and submit it with your slides.

2.1.1 Unless otherwise specified in this Section 2.1.2, or unless otherwise authorized in writing by the Client, ITS-DS shall not make or permit any alterations to the Works.

2.1.2 In accordance with Section 2.1.1, ITS-DS may make the following alterations to the Works (check all that apply):

- Clean the materials (remove dust and/or spots from digital image)
- Crop the images
- Perform Color modification (particularly in the case of old, yellowed slides/photos)
- Other (please specify)

2.2 Right of Refusal – ITS-DS reserves the right to refuse part or all of Client’s Works if ITS-DS determines, in its sole discretion, that such Work(s) may be defamatory, or unlawfully published if stored or displayed as intended under this Agreement, or that publication of the Works would otherwise be inimical to, or inconsistent with, the educational mission of Bowling Green State University.

2.3 Proof of Ownership – At its election, ITS-DS may require Client to submit proof of copyright ownership prior to inclusion in the ITS-DS DMRC.

3.0 NOTICES AND ACKNOWLEDGEMENTS

3.1 Standard Notice – Unless otherwise specified in Section 3.3, whenever the Works are electronically displayed by ITS-DS pursuant to the license granted under Section 1.0, the Works shall be accompanied by the *Standard Copyright Notice* specified in subsection (a) of this Section 3.1.

(a) The *Standard Copyright Notice* is as follows:

(for visually perceptible copies of Works only)

© _____ [***Year of First Publication***] _____ [***name of owner***]

3.2 Standard Acknowledgement – Unless otherwise specified in Section 3.4, whenever the Works are electronically displayed by the ITS-DS pursuant to the license granted under Section 1.0, the Works shall be accompanied by the following *Standard Copyright Acknowledgement*:

ACKNOWLEDGEMENT OF COPYRIGHT RESPONSIBILITIES

This material is copyrighted and is the property of the owner stated in the copyright notice. Unless otherwise specifically stated below in *Terms and Conditions of Use*, as required by law you must contact the owner(s) of this copyrighted material prior to any reproduction or other use of this material (see Title 17, United States Code). You are urged to contact your own legal counsel for advice about all such matters. It is the sole responsibility of the user of this material to ensure that you are acting in full compliance with all relevant laws, rules, and regulations. The owner(s) of this copyrighted material may be contacted at:

3.3 Substitute Copyright Notice – In lieu of the *Standard Copyright Notice* stated in Section 3.1(a) the Client hereby directs the ITS-DS to use the following Substitute Notice: **[If there is no substitute, so state]**

3.4 Substitute Copyright Acknowledgement – In lieu of the *Standard Copyright Acknowledgement* stated in Section 3.2 the Client hereby directs the ITS-DS to use the following Substitute Acknowledgement: **[If there is no substitute, so state]**

4.0 TERMS AND CONDITIONS OF USE

4.1 Standard Terms and Conditions of Use – Unless otherwise specified in Section 4.2, whenever the Works are electronically displayed by the ITS-DS pursuant to the license

granted under Section 1.0, the following *Terms and Conditions of Use* shall be inserted immediately after the Copyright Notice for the Work and the Copyright Acknowledgement:

Terms and Conditions of Use Authorized Users of this collection may search, view, retrieve, copy, and/or display the Works by means of a secure internal network for the sole purpose of research, teaching, study, or other academic and non-commercial pursuits. All other right, title, and interest in and to the Works remain with the Owner(s) of the Works, as stated in the above Copyright Notice and the Copyright Acknowledgement.

4.2 **Substitute Terms and Conditions of Use** – In lieu of the *Standard Terms and Conditions of Use* stated in Section 3.1 the Client hereby directs the ITS-DS to state the following terms and conditions: **[If none, so state]**

Terms and Conditions of Use: [If there is no substitute, so state]

5.0 AUTHORIZED USERS

For purposes of this Agreement –

- (a) The term “Authorized User” shall mean those persons who have been issued a password or other authentication by ITS-DS to permit access to the DMRC. In the case of the Contemporary Printmaking Project, no password will be necessary and access is open to the public.

6.0 CLIENT REPRESENTATIONS

Except for the license granted under Section 1.0, and as otherwise stated below in this Section 6.0, the Client hereby represents and warrants that it owns the entire right, title, and interest in and to all text, graphics, designs, and all other copyrightable elements in and to the Works, that the Works do not infringe the copyright or any other right of any other person, and that the Works do not contain anything defamatory of any person.

Description of Rights, Title or Interest in or to the Works by Others (if none, so state):

7.0 DELIVERY SCHEDULE

The Client agrees to deliver the Works between the dates of October 1, 2007 and December 1, 2007 to be eligible for this project.

8.0 FEES

8.1 Charges – Client agrees to pay ITS-DS the following amounts as a monthly charge for the digitization, storage, and display of the Works:

- | | | | | | |
|---|----------------|------------|--------|-----------|--------|
| <input type="checkbox"/> Digital Images | Quantity _____ | Unit Price | \$0.00 | Extension | \$0.00 |
| <input type="checkbox"/> Slides | Quantity _____ | Unit Price | \$0.00 | Extension | \$0.00 |

Total Monthly Charge for All Works: \$0.00

9.0 LOSS OR DAMAGE

9.1 Transportation – The Client hereby warrants and represents that it is solely responsible for and has adequate insurance to cover the loss of the Works during transit to and from the ITS-DS office located on the campus of Bowling Green State University. The Client hereby acknowledges and agrees that ITS-DS is under no obligation whatsoever to secure insurance of the Works for any loss that may arise in connection with transportation of the Works to and from such campus. Should the Client wish to have materials returned, the Client will provide ITS-DS with a self-addressed, stamped envelope. If a self-addressed, stamped envelope is not included, materials will be retained or disposed of at ITS-DS' sole discretion.

9.2. Responsibilities – The Client indemnifies and holds harmless the University, its Board of Trustees, officers, employees and representatives, and agents from and against any and all claims, demands, damages, assertions of liability and/or losses (including reasonable attorney and paralegal fees), arising out of the transportation of the Works to or from Bowling Green State University and/or arising from any and all claims that publication or storage of one or more items contained in the Works infringe upon the property rights of any third party or contains defamatory, obscene, or other material that may not be lawfully stored or published, as contemplated by this Agreement.

9.3 Independent Parties – At all times under this Agreement, the Client and ITS-DS shall be considered independent parties. Nothing contained herein, nor any course of action or

failure to act, shall be construed to create a partnership, joint venture, common business association, or any other similar entity; nor shall any such action or failure to act be deemed to create an employer-employee or agent-servant relationship between the Parties. Neither party to this Agreement shall be responsible for any obligation or liability incurred or assumed by the other Party or its employees, affiliates, or other representatives, and each Party shall be responsible for its own acts or omissions and those of its employees, affiliates, or other representatives and nothing contained herein is intended to shift such responsibility from one Party to the other.

10.0 TERM

This License shall commence on the date of the later signature below and shall continue in perpetuity.

11.0 SUCCESSORS AND ASSIGNS

The University and the Client each bind themselves, their successors, assigns and legal representatives, to the other Party to this Agreement and to the successors, assigns and legal representatives of the other Party with respect to all terms of this Agreement. Neither Party shall assign, or transfer any right, title or interest in this Agreement without the prior written consent of the other Party, except that the University may assign its rights to another not-for-profit corporation that is affiliated with the University.

12.0 EXTENT OF AGREEMENT; MODIFICATIONS

This Agreement and its Exhibits represent the entire and integrated agreement between the Parties and supersede all prior negotiations, representations or agreements, either written or oral. No representations were made or relied upon by any Party other than those expressly set forth herein. No agent, employee, or representative of a Party is empowered to alter or modify any of the terms in this Agreement unless such alteration or modification is done in writing and signed by the signatories below, or their successors, or other authorized persons designated, in writing, by such signatories or successors.

13.0 NOTICES

13.1 Representatives. All notices, designations and other communications contemplated under this Agreement shall be in writing and shall be either personally delivered, or transmitted by certified mail, facsimile transmission, wire, or other device reasonably calculated to effect delivery of documents within three (3) calendar days. All such notices shall be effective only when received by the addressee. Unless otherwise agreed to in writing by the Parties, such notices, designations, and communications shall be sent to the Parties' representatives at the addresses noted below:

University Representative:

Name: Janet C Ballweg
Title: Professor
Address: 1207 Fine Arts Center BGSU Bowling Green, Ohio 43403
Voice: 419-372-8515
E-mail: jballwe@bgsu.edu

Client Representative:

Name:
Title:
Address:
Voice:
E-mail:

With a Copy to:

- 13.2 Changes in Designation. Each Party reserves the right to change the designation of its representative specified in Section 13.1 by a unilateral modification to this Agreement signed by that Party's signatory below and forwarded to the other Party's representative pursuant to this Section 13.0.

14.0 TERMINATION

- 14.1 Subject to the provisions of Section 14.2, this AGREEMENT shall be deemed terminated upon the occurrence of any one or more of the following events:
- (a) a material breach of a term or condition of this Agreement, if the non-breaching party so elects;
 - (b) a party becomes insolvent or subject to a petition in bankruptcy or is placed under the control of a receiver, liquidator or committee of creditors;
 - (c) upon the expiration of the term specified in Section 10.0;
 - (d) upon 30 days prior written notification by one Party to the other; or
 - (e) if the Client assigns, transfers, or otherwise grants any interest in or rights to the Works that, in the sole determination of the University, would be in conflict or inconsistent with the license to the University described in Section 1.0 of this Agreement.

14.2 The provisions contained in Sections 9.2 and 17.0 shall survive the termination of this AGREEMENT.

15.0 WAIVERS

Any waiver by a Party to any term or condition of this Agreement by the other Party shall not affect or impair the waiving Party's right with respect to any subsequent act or omission of the same type, nor shall it be deemed to waive any other right under this Agreement; nor shall any delay or omission of a Party to exercise any right arising under this Agreement affect or impair such Party's rights as to the same or any future delay or omission; nor shall the failure of a Party to this Agreement to require or exact full and complete compliance with any one or more of the provisions of this Agreement be construed as in any manner changing such provision or provisions.

16.0 SEVERABILITY

If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

17.0 GOVERNING LAW

This Agreement shall be interpreted, controlled, and enforced in accordance with the substantive laws of Ohio. The Parties to this Agreement hereby submit to personal jurisdiction in Ohio for the purposes of enforcing this Agreement. In the event litigation is commenced, the Client agrees that service of process may be made and personal jurisdiction over it obtained, by service of a copy of the summons, complaint, and other pleadings required by applicable law to commence such litigation upon the Client's appointed agent for service of process in Ohio. In the event the Client fails to appoint such agent pursuant to the laws of Ohio, or if such appointment should lapse for any reason, the Client hereby alternatively designates its signatory to this Agreement as its appointed agent for the service of process in Ohio regardless of the place of resident of such signatory.

18.0 AUTHORITY TO ACT

The Parties hereto warrant and represent that they have the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and have been duly authorized to execute this Agreement.

19.0 CAPTIONS

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

IN WITNESS WHEREOF, the Parties intending to be legally bound thereby have signed this CLIENT AGREEMENT as of the date appearing next to their respective signatures below.

BOWLING GREEN STATE UNIVERSITY

CLIENT

By _____
(Signature)

By _____
(Signature)

(Printed Name)

(Printed Name)

Title: _____

Title: _____

Date: _____

Date: _____

BGSU DEPARTMENT REPRESENTATIVE

By _____
(Signature)

Printed Name: _____

Title: _____

Date: _____