

## ArtManager® Subscription Order Form

### Client and Subscriber (Customer) Information

Company Name:

Contact Person:

Title:

Address:

Telephone:

Fax:

E-mail:

### Subscription, Services, and Fees

Subscriptions:

Installation/Training:

Data Conversion:

Collections:

Users (IDs):

Service Terms:

Effective Date:

Custom Services:

Additional Services:

### Acceptance

**For ArtManager Online Services, LLC**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**For Customer**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Standard Services Schedule

The ArtManager Online Services, LLC (“AOS”) applications and subscriptions (“Software” or “Services”) include on-line help functions. In addition, there are technical support tools or bulletins posted on our web site periodically, at www.artmanageronline.com. We can be contacted at: ArtManager Online Services, LLC, 100 Clearbrook Road, Elmsford, NY 10523; Main Telephone: 914.347.4495 ; Fax: 914. 345.8161; Technical Support: 914.345.9444 x3012.

**Services Availability.** The Services are available 24x7x365, except for routine maintenance, that is generally scheduled to occur during non-business hours. AOS reserves the right to perform server or application maintenance at any time as may be needed.

**Technical Support Availability.** We provide technical and maintenance support during normal business hours, Monday-Friday, 8:30 AM to 5:00 PM, Eastern Time. Upon advance request, we will schedule specific customer support calls at other times.

**Problem Classification and Response.** Technical support or maintenance requests are classified as follows: Severity 1--Critical Problem (prevents application from being used); Severity 2--Serious Problem (doesn't prevent application from being used); Severity 3--Minor Problem (doesn't prevent application from being used). We will use all reasonable efforts to respond to problems as follows: Severity 1--Critical Problem within 2 business hours; Severity 2--Serious Problem within 8 business hours; Severity 3--Minor Problem within 3 business days.

**Application Updates.** Customer will receive (at no charge) any program updates to the application during the term of the Subscription Agreement. “Updates” means any updates to the Services or Software that AOS, in its discretion, makes generally available to its customers.

**Backup.** Customer information is backed up weekly. Customer requests for special backups or data restoration require 72 hours advance notice and are billed at then current technical support rates.

**Application Enhancement Requests.** For Enhancement Requests, we'll provide a quotation or estimate that includes the expected cost, time frame for development and delivery, and expected impact (if any) on the rest of the application. If then approved by Customer, the Enhancement Request will be developed. AOS reserves the right to refuse any Enhancement Request if, in its sole discretion, the Enhancement would have a negative impact on the Software or other AOS products and services.

**Changes to Support Services and Procedures.** AOS reserves the right to change its technical support guidelines and procedures at any time.

## Standard Fee Schedule

Service	Amount or Frequency	Fee*	Invoiced
<b>ArtManager® Express Subscription</b>		<b>\$300.00 per year</b>	<b>Annually</b>
<b>ArtManager® Curator Subscription</b>		<b>\$4,800.00 per year</b>	<b>Annually</b>
<b>ArtManager® Subscriptions Include</b>			
Routine Backup	weekly	Included	
Firewall Support	continuous	Included	
Server General Availability	24x7x365 except for routine server maintenance (approx. 2 hrs/week)	Included	
<b>ArtManager® Client Services</b>			
Inventory Documentation/Research	At Subscriber's request	\$200 per hour or: \$75 per item or: Special Quote for 1000+ items	Monthly
<b>Other Services</b>			
Additional Technical Support	At Subscriber's request	\$175 per hour	Monthly
On-site Training	At Subscriber's request	\$175 per hour	Monthly
Data Conversion or Data Loading	At Subscriber's request	\$175 per hour	Monthly
Custom Reports or System Changes	At Subscriber's request	Special Quote	Monthly

\*Fees effective 4/1/2000; subject to change without notice.

## Terms and Conditions

The following terms and conditions govern the provision by ArtManager Online Services, LLC ("AOS ") of the services set forth in the attached Order Form (the "Services") to the Customer identified on the Order Form. These terms and conditions and any attachments to this agreement or documents incorporated by reference shall be legally binding between the parties and are referred to in this agreement, collectively, as the "Agreement." The parties agree as follows:

1. **Obligations of AOS.** AOS shall provide the Services to Customer through AOS's web site. AOS agrees to supply support services as set forth in the Fee Schedule to Customer during the term of this Agreement. In accordance with and subject to the Acceptable Use Policy identified in Section 2, AOS shall permit access to the Services through a password protected gateway to that number of Customer's employees or agents specified on the Order Form.

2. **Obligations of Customer.** Customer shall comply with all terms of this Agreement, including, but not limited to, AOS's policies and procedures as provided to Customer from time to time and the Acceptable Use Policy located at url [www.artmanageronline.com](http://www.artmanageronline.com) as this Acceptable Use Policy may be modified from time to time. Customer agrees to cooperate as requested by AOS to properly support the Services. Customer shall not post, transmit, re-transmit or store material on or through any of the Services that, in the sole judgment of the AOS (a) is in violation of any law or regulation; (b) is threatening, racially inflammatory, malicious, obscene, indecent, defamatory or that otherwise could adversely affect the rights of any individual, group or entity; (c) violates the rights of any person, including rights protected by copyright, trade secret, patent or other intellectual property or similar laws or regulations; (d) constitutes or encourages the commission of a criminal offence; or (e) was obtained illegally, in contempt of court, or in breach of contract, duty of confidence, Parliamentary privilege or court reporting restrictions. AOS may investigate any illegal use of the Services and any suspected breach of the Acceptable Use Policy. Where Customer or Customer's employees or agents are considered or alleged to have breached the Acceptable Use Policy, AOS reserves the right to take measures appropriate and proportionate to the breach. These measures may include suspension of the Services with or without notice depending upon the severity of the breach or illegal use, charging Customer for AOS's reasonable costs of investigating and dealing with the breach or blocking access to any relevant component of the Services. Where AOS suspends or blocks the Services, the suspension or blocking may be lifted when the reason for suspension or blocking has been rectified and upon receipt of a formal written undertaking by Customer not to commit any future breach. Customer is solely responsible and liable for providing Customer's employees or agents a password to gain access to the Services.

3. **Term.** The initial term of this Agreement shall be 1 year and will begin on the date this Agreement is executed by AOS. Upon payment of the then current

annual subscription fee, the term of this Agreement will be extended for a successive 1 year period.

4. **Charges.** Customer shall pay AOS for the Services at the rates, fees and charges set forth in AOS's then current Fee Schedule. Each AOS invoice must be paid by Customer in immediately available U.S. funds so that the payment is received by AOS no later than 30 days from the date of the invoice (the "Due Date"). Any invoice not paid by the Due Date will bear late payment fees at the lower of 1.5% per month or the highest rate legally permissible, until paid. AOS may immediately suspend or terminate the Services upon 5 days prior written notice, if any invoice is not paid by its Due Date and Customer fails to cure this non-payment within this 5 day period.

5. **Taxes.** Customer shall be liable for, pay and, to the extent applicable, reimburse AOS for all local, state, federal and non-United States taxes or similar assessments or charges (including any interest and penalties imposed thereon), other than taxes based on the net income of AOS arising out of this Agreement or the sale of the Services under this Agreement. AOS will have the right, at any time during any term of this Agreement, to pass through and invoice to Customer any new or increased fees, assessments, taxes or other charges imposed on, or required to be collected by, AOS by any governmental agency or its designee. Customer will pay and be solely responsible for all taxes, fees and charges levied directly upon Customer.

6. **AOS Licenses.** AOS grants Customer a non-exclusive, non-transferable and revocable license to use the Services, including any software that operates the Services ("Software") during the term. Customer agrees that all Software shall be treated as the exclusive property of AOS or AOS's suppliers and a trade secret of AOS or AOS's suppliers, as appropriate, and Customer agrees to hold the Software in confidence, utilize the Services and Software solely in the manner described in the related documentation furnished by AOS and refrain from modifying, copying, reverse engineering or decompiling the Software or otherwise reducing the Software to human readable form.

7. **Customer Content.** For the purpose of AOS performing this Agreement, Customer grants AOS a non-exclusive, non-transferable, royalty free right to use, store, backup, translate, exhibit, publish, transmit, display, reproduce and otherwise use all content and materials provided to AOS, including any images, photographs, illustrations, graphics, audio clips, video

clips, trademarks, service marks or text (the "Content"). Customer represents and warrants to AOS that Customer has the right to grant to AOS the rights contained in this Section 7.

**8. Indemnification.** Customer shall defend, indemnify and hold harmless AOS and AOS's officers, managers, employees, members and agents (each, an "Indemnified Person"), at Customer's expense, from and against any dispute, demand, claim, damages, action, proceeding or suit to which an Indemnified Person may be subject arising out of or related to: Customer's use of the Services; Customer's breach of this Agreement; any claims asserted by parties other than Customer who have use of or access to the Services through Customer, including, but not limited to, Customer's employees and agents; Customer's business transactions; and the Content, including, but not limited to, any infringement or misappropriation or alleged infringement or misappropriation of any copyright, trade secret or other intellectual property, proprietary, privacy or other legally enforceable right related to Customer's Content.

**9. Warranties/Limitation of Liability.** THE SERVICES, DOCUMENTATION, AND OTHER MATERIAL THAT MAY BE PROVIDED BY AOS IN CONNECTION WITH THIS AGREEMENT (COLLECTIVELY, "AOS MATERIAL") IS PROVIDED "AS IS." AOS MAKES NO WARRANTIES, OF ANY NATURE WHATSOEVER, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED WITH RESPECT TO THE AOS MATERIAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT. AOS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER IN CONNECTION WITH THIS AGREEMENT, LOSS OF DATA, ACCESS TO OR THEFT OF CUSTOMER'S DATA, OR ANY ASPECT OF THE PERFORMANCE OR FAILURE TO PERFORM IN CONNECTION WITH THIS AGREEMENT, EVEN IF AOS HAS BEEN ADVISED OF THE POSSIBILITY OF THESE LOSSES OR DAMAGES. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE MAXIMUM AGGREGATE LIABILITY OF AOS FOR A CLAIM OR ACTION IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED IN CONTRACT, EQUITY, NEGLIGENCE, TORT OR OTHERWISE, FOR ANY EVENT, ACT OR OMISSION SHALL NOT EXCEED, IN THE AGGREGATE, THE ACTUAL AMOUNTS PAID BY CUSTOMER TO AOS.

**10. AOS Material Ownership.** Title to the AOS Material will at all times be vested in AOS. This Agreement does not confer any rights of ownership to Customer. Title to the AOS Material remains with AOS or its licensors and AOS reserves all proprietary rights in and to all designs, engineering details, computer programs, patents, know-how, techniques and other data pertaining to the AOS Material. Customer shall return the AOS Material to AOS upon request. AOS retains all right, title and interest in and to its

trademarks, service marks and trade names worldwide, including any goodwill associated therewith.

**11. Termination.** If a party breaches any material term or condition of this Agreement (other than a failure to pay an invoice or use the Services in accordance with the Acceptable Use Policy, which are addressed under Sections 4 and 2, respectively), the other party may terminate this Agreement upon 15 days prior written notice, unless the breaching Party cures this breach during the 15 day period.

**Notices.** Unless otherwise specified herein, any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and delivered personally or sent by facsimile transmission, internationally recognized overnight courier or registered mail, to the address or facsimile number of Customer as set forth on the Order Form or AOS as set forth below. Such notices or other communications shall be deemed received (a) on the date delivered, if delivered personally, (b) on the date that confirmation of delivery is received, if sent by facsimile, (c) on the next business day (or, if international, on the second business day) after being sent by an internationally recognized overnight air courier or (d) five (5) days after being sent, if sent by first class registered mail. ArtManager Online Services, LLC, Attn: Legal Dept., 100 Clearbrook Rd., Elmsford, NY 10523

**12. Miscellaneous.** Customer may not assign or transfer its rights or obligations under this Agreement in whole or in part without AOS's prior written consent. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to any choice of law principles that could result in the application of the laws of any other jurisdiction. This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter of this Agreement and supersedes all previous discussions, understandings, and writings between the parties with respect to such subject matter. AOS shall not be liable for delays or failure to meet its obligations pursuant to this Agreement due to causes beyond AOS's reasonable control, including, but not limited to the unavailability of the Internet. If any provision of this Agreement is held to be invalid or unenforceable, the remainder of the provisions shall remain in full force and effect. A waiver by either party of any provision of this Agreement shall not be construed as a continuing waiver of such provision. Each party shall retain the right to enforce any such provision in any subsequent breach. Sections 2, 7, 8, 9, 10 and 12 survive the expiration or termination of this Agreement. This Agreement may be executed in any number of counterparts, each of which is an original, but these counterparts will together constitute but one and the same document.