



Academic Libraries Video Trust Membership Agreement

This Agreement sets forth the terms of your joining Academic Libraries Video Trust (“ALVT”) as a participating library to have the benefit of the services of ALVT for the preservation and maintenance of audiovisual works in the collections of participating libraries (“Member Libraries”), starting as of the Effective Date specified below.

This Agreement is made by and between The National Film Market, a Tennessee not-for-profit corporation, doing business as National Media Market (“NMM”), and the following library, archive, or other organization (“Library”):

Name of Library: _____

For avoidance of doubt, any reference to Member Libraries will also include the Library.

Recitals

- A. NMM has launched ALVT, a service facilitating the preservation of audiovisual works, and potentially other types of works (“AV Works”), in the collections of Member Libraries. The principal activity of ALVT is to provide a clearinghouse or repository of digital versions of selected AV Works, such as works currently available only in the obsolete VHS format.
- B. The Library desires to participate in ALVT in order to encourage and facilitate the preservation and appreciation of the educational films, motion pictures, documentaries, and other works that are increasingly out of reach because of obsolete technology or other harm that the works have suffered.
- C. The parties desire to exercise opportunities allowed to libraries and archives for the preservation and replacement of works in their collections, pursuant to the U.S. Copyright Act.
- D. The parties desire to enter into this Agreement in order to set forth the terms on which they may use the ALVT in furtherance of preservation of AV Works and the growth of knowledge.

Section 1: ALVT Services

1.1 ALVT Services. For payment of Fees and other consideration, the Library will have the benefit of the following services (“ALVT Services”) during the Term (as defined in Section 4):

- (a) Access to ALVT;



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- (b) The ability to upload copies of AV Works for purposes of retaining secure copies as allowed under copyright law and making them available to other Libraries consistent with this Agreement; and
 - (c) The ability to download copies of AV Works for purposes of adding them to the Library's collections consistent with this Agreement.
- 1.2 Policies and Procedures. All ALVT services will be provided, and the Library will utilize the ALVT Services, in a manner consistent with the policies and procedures of ALVT as adopted and implemented by NMM from time to time.
- 1.3 Additional Services. NMM may provide additional services in the future, but has no obligation to do so, and additional services may be included within the scope of this Agreement or be subject to separate terms or separate fees or both.
- 1.4 Authorized Users. The Library will permit only duly authorized librarians or other employees or staff members of the Library to access and use the ALVT Services. The Library understands that the ALVT is not to be accessed or used by the public or by individual users or patrons of the Library.

Section 2: Fees and Payments

- 2.1 Fees. As payment in full for the ALVT Services, the Library will pay the following fees (collectively the "Fees") to NMM:
- (a) On or before the Effective Date, the Library will pay to NMM a one-time fee ("Membership Fee") as specified on the fee schedule ("Fee Schedule") attached as Exhibit A;
 - (b) On each Anniversary Date (as defined in Section 4), the Library will pay to NMM a maintenance fee ("Annual Fee") as specified on the Fee Schedule; and
 - (c) With respect to each download by the Library of an AV Work from ALVT, the Library will accrue a fee to be added to next Annual Fee due to NMM ("Service Fee"), provided that Service Fees will not apply to the first fifteen (15) downloads during the calendar year preceding each Anniversary Date when the Annual Fee is due.
- 2.2 Credits. With respect to each upload by the Library of an AV Work or other work accepted for inclusion in ALVT, no fee will be due. The Library may receive credits to be applied against the next Annual Fee for making uploads with accompanying due diligence metadata consistent with ALVT policies and procedures, as specified on the Fee Schedule.



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- 2.3 Determination of Fees. NMM may in its sole authority determine the Fees, provided that no change in Fees for the Library will take effect with respect to the Library until the next following Anniversary Date after notification of Fee changes. NMM will use its best efforts to determine all changes in Fees and credits before October 1 of each year.
- 2.4 Payment of Fees. The Membership Fee is due in full upon the Effective Date. All other Fees are due and payable upon receipt of an invoice from NMM, and NMM will ordinarily prepare and deliver invoices not more often than annually. NMM may in its discretion prepare and deliver an invoice more often than annually as warranted based on accrued Fees. All Fees will be stated and payable in U.S. dollars. Failure to pay any or all of the Fees within thirty (30) calendar days of the date due can lead to suspension of access to the ALVT Services, at NMM's discretion.

Section 3: Intellectual Property

- 3.1 Use of ALVT Services. The Library understands that the ALVT Services are developed and implemented based on specific conditions provided in the U.S. Copyright Act or as otherwise permitted under law.
- (a) The Library will adhere to all guidance and requirements provided by NMM from time to time in connection with the use of any ALVT Services.
 - (b) The Library will comply with the NMM Acceptable Use Policy and any other policies and procedures adopted by NMM from time to time.
 - (c) The Library will not capture, download, or otherwise copy any works or information it might access through the use of the ALVT, other than as part of the intended ALVT Services.
 - (d) The Library will, in connection with all uses of the ALVT Services, respect the rights and interests of other Member Libraries, users of library collections, as well as the holder of rights with respect to any of the AV Works.
 - (e) The Library will notify NMM promptly of any unauthorized use of the ALVT or use of the Library's identifications or passwords.
- 3.2 NMM Rights in IP. This is an Agreement for access to and use of the ALVT Services, and the Library may use the services and related systems and software only as permitted consistent with this Agreement. The words, logos, and other marks related to "ALVT," "Academic Libraries Video Trust," "National Media Market" and other names and terms are the property of NMM and may only be used in a manner consistent with this Agreement.
- 3.3 Copyright Ownership. Nothing in this Agreement constitutes a transfer of ownership of any copyrights. The parties understand that the ALVT Services are based on the ability



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of the parties to lawfully use works, the copyrights to which may be held by third parties. To the extent that either of the parties to this Agreement may hold legal rights with respect to any works or data that are created or used in connection with the ALVT Services, such party grants to the other and to all Member Libraries a perpetual, non-exclusive, non-transferable, non-sublicensable license (permission) to use such works or data as reasonably appropriate to effectively use and benefit from the ALVT Services consistent with this Agreement.

- 3.4 No Right of Removal. The Library understands that it has no right under this Agreement to remove or modify any AV Work, file, metadata, or any work or information after it has been uploaded and made available to be a part of ALVT, whether prepared or contributed by the Library or any other party. However, the Library may request that NMM make or allow such removal or modification. Notwithstanding the foregoing, the Library will inform NMM immediately of any specific work or information available through ALVT that the Library in good faith believes is included in a manner not consistent with this Agreement, or believes the inclusion of which violates any legal rights of third parties.
- 3.5 Confidentiality. (a) NMM and the Library will take reasonable steps to respect and ensure any privacy interests related to the business, finances, and operations of either party. In the normal operation of ALVT, NMM does not knowingly ask for, receive, or maintain confidential information from or about any Member Library. The Library permits NMM the right to include the name of the Library in public customer lists, publications, and website. (b) THE LIBRARY AGREES NOT TO USE THE ALVT SERVICE TO COLLECT, MANAGE, OR PROCESS SENSITIVE INFORMATION. NMM WILL NOT HAVE ANY LIABILITY THAT MAY RESULT FROM THE LIBRARY'S USE OF THE ALVT SERVICE TO COLLECT, MANAGE, OR PROCESS SENSITIVE INFORMATION.

Section 4: Term and Termination

- 4.1 Term and Renewal. The initial subscription period ("Term") will commence as of the Effective Date and continue for one (1) calendar year and will be automatically renewed on the same such date in the following year ("Anniversary Date"), with the Term extended annually for a calendar year from and after each Anniversary Date. The Term will expire only in a manner consistent with termination as specified in this Section 4.
- 4.2 Termination. Either party may terminate this Agreement for any reason or no reason: (i) upon not less than ninety (90) days' notice to the other party; or (ii) immediately, if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation, or assignment for the benefit of creditors. NMM may also terminate this Agreement for cause on thirty (30) days' notice if NMM determines that the Library is acting, or has acted, in a way that has or may negatively reflect on or affect NMM, the ALVT Services, or other current or prospective Member Libraries, or has used the ALVT Services in some manner inconsistent with this Agreement.



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- 4.3 Suspension of Service. NMM may immediately suspend the Library's access to and use of any or all ALVT Services without notice for: (a) use of the ALVT Service in a way that violates applicable local, state, federal, or foreign laws or regulations or the terms of this Agreement, including posting or uploading material that infringes on the copyright or other legal rights of any person or entity; or (b) use of the ALVT Service in a manner inconsistent with this Agreement and the policies and procedures referred to herein.
- 4.4 No Refunds. In the event that the Term shall come to an end on some date other than an Anniversary Date, the Annual Fee shall be due in full for that year and not be subject to prorating or reimbursement. No prorating or reimbursement will also apply with respect to any suspension of service provided by Section 4.3 or any other provision of this Agreement.
- 4.5 Effect of Termination. On any expiration or termination of this Agreement, the Library's ability to access, use, or otherwise benefit from the ALVT Services will terminate immediately, and the Library will cease all use of any ALVT Services. All rights of NMM with respect to the Library will continue until all obligations are fulfilled.

Section 5: Representation and Warranties

- 5.1 Warranties. This Agreement and the services of ALVT are developed and made available in accordance with applicable provisions of federal and state law of the United States. The Library represents and warrants that: (a) it will adhere to the copyright guidance and other policies and procedures provided by NMM in connection with all uses of the ALVT Services; (b) it will use the services of ALVT only within the applicable jurisdiction of the U.S. Copyright Act; and (c) it will at all times during the Term be eligible for and meet the qualifications of a library or archives to exercise opportunities and apply the provisions of Section 108 of the U.S. Copyright Act.
- 5.2 Limitations. (a) The parties understand and agree that NMM does not and cannot know how the Library or any Member Library will use any AV Work it might add to any Member Library's collections through the use of ALVT Services. Accordingly, NMM makes no representation or warranty to any party with respect to uses of any AV Work by any Member Library or any user or patron of a Member Library at any time after the AV Work has been received by the Member Library. (b) The parties understand and agree that NMM does not and cannot investigate and confirm the status or facts related to any AV Work that may be made available or utilized in connection with ALVT Services. Accordingly, NMM makes no representation or warranty to any party with respect to whether any specific AV Work is utilized in compliance with copyright and related law.

Section 6: Indemnification

The Library will indemnify, defend, and hold harmless NMM and its officers, directors, employees, agents, successors, and assigns, as well as any consultant or contractor thereof against all losses, claims, costs, damages, judgments, settlements, or causes of action arising out



of or resulting from any third party claim, suit, action, or proceeding arising out of or resulting from the Library's breach of any representation, warranty, covenant, or obligation under this Agreement, including any unauthorized uses of the ALVT Services or any uses by the Library that are not consistent with the then-current policies and procedures and legal requirements applicable to ALVT Services.

Section 7: Limitations on Liability

- 7.1 In no event will NMM be liable to the Library or to any third party for any loss of use, revenue, profit, or loss of data or content, or for any consequential, incidental, indirect, exemplary, special, or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damage was foreseeable and whether or not service provider has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- 7.2 In no event will NMM's aggregate liability to the Library arising out of or related to this Agreement or the ALVT Services, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed the aggregate amount of Fees paid to NMM by the Library during the calendar year of the event giving rise to the claim.
- 7.3 OTHER THAN THE LIMITED REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, NMM EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, CONCERNING THE COMPLETENESS, SAFETY, USEFULNESS FOR ANY PURPOSE, OR LIKELIHOOD OF SUCCESS (COMMERCIAL, REGULATORY OR OTHER) OF THE ALVT SERVICES AND RELATED IP, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF IP AND RELATED RIGHTS, AND WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, NMM WILL HAVE NO LIABILITY WHATSOEVER TO THE LIBRARY OR ANY OTHER PERSON FOR OR ON ACCOUNT OF ANY INJURY, LOSS, OR DAMAGE, OF ANY KIND OR NATURE, SUSTAINED BY, OR ANY DAMAGE ASSESSED OR ASSERTED AGAINST, OR ANY OTHER LIABILITY INCURRED BY OR IMPOSED ON THE LIBRARY OR ANY OTHER PERSON, ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM (A) THE MANUFACTURE, DEVELOPMENT, USE, OFFER FOR SUBSCRIPTION OR SALE, SALE, OR IMPORT OF THE ALVT SERVICE, OR THE PRACTICE OR USE OF THE ALVT SERVICE; (B) THE USE OF OR ANY ERRORS OF OMISSIONS IN ANY KNOW-HOW, TECHNICAL INFORMATION, TECHNIQUES, OR PRACTICES DISCLOSED BY NMM; OR (C) ANY ADVERTISING OR OTHER PROMOTIONAL ACTIVITIES CONCERNING ANY OF THE FOREGOING.



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Section 8: General Provisions

- 8.1 Policy Updates. NMM may update and change any part or all of the NMM Acceptable Use Policy and any other policies and procedures adopted by NMM from time to time. The updated policies and procedures will become effective and binding on the next business day after communicated to Member Libraries or as may be explicitly stated otherwise. NMM encourages all Member Libraries to review all policies and procedures periodically. NMM is a nonprofit entity that engages in community governance. Member Libraries are invited to notify NMM with comments and suggestions about policies and procedures.
- 8.2 Contract for Services. This Agreement is a contract for the provision of services and not a contract for the sale of goods. Without limitation on other aspects of ALVT Services or other services that NMM may provide, all Member Libraries understand that ALVT is a service that facilitates the implementation of provisions of copyright law, and any possession or use of any AV Work or other work that may be made available through ALVT is only as anticipated in and as an incident to provisions of U.S. copyright law.
- 8.3 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party person or entity any right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 8.4 Assignment. The Library will not assign or transfer this Agreement, including any assignment or transfer by reason of merger, reorganization, sale of all or substantially all of your assets, change of control or operation of law, without our prior written consent from NMM. The Library will not permit any other party to exercise any of the Library's rights under this Agreement with respect to the ALVT Services. NMM may assign this Agreement to any affiliate or in the event of merger, reorganization, sale of all or substantially all of NMM's assets, change of control or operation of law.
- 8.5 Notices. Notice will be sent to the contact address set forth in this Agreement, or as later provided to the other party in writing, and will be deemed delivered as of the date of actual receipt.
- 8.6 Governing Law and Venue. This Agreement will be governed by and construed in accordance with the substantive and procedural laws of the State of New York, or the applicable federal laws of the United States, applicable to agreements made and to be performed entirely within such State. The parties hereby agree that any action, suit, arbitration or other proceeding arising out of or related to this Agreement or any document referenced in this Agreement must be commenced in the state courts located in the County of Nassau, State of New York, or the federal court of the Eastern District of New York.
- 8.7 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this



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Agreement is held to be prohibited by or invalid, such provision will be ineffective only to the extent of such prohibition or invalidity in such jurisdictions without invalidating the remainder of such provision or the remaining provisions of this Agreement.

- 8.8 Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party will be entitled to recover such reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled, as may be awarded by the court or arbitrator.
- 8.9 Fees and Expenses. Each party will be responsible for its own fees and expenses incurred in connection with this Agreement and the performance of each party's obligations therein.



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IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the following Effective Date: _____, 2018.

The Library:

Signed: _____

Print Name: _____

Title: _____

Address: _____

Email: _____

Telephone: _____

By signing below, NMM has approved the acceptance of the Library as a Member Library and agrees to be bound with the Library as a party to this Agreement:

National Media Market:

Signed: _____

Print Name: _____

Title: _____



Schedule A
Fee Schedule
Academic Libraries Video Trust
Membership Agreement

The following Fee Schedule constitutes Exhibit A to the ALVT Membership Agreement, and it is made a part of and is subject to the terms of the Agreement.

Library: _____

Effective Date: _____, 2018

One-Time Initial Membership Fee: \$ 1,500.00.

Annual Fee: \$ 1,000.00.

- Privileges include no Service Fee for - downloads up to 15 works per year.

Service Fee: \$ 25.00 for each downloaded AV Work.

- No Service Fee applies to the first 15 downloads per year.
- Service Fee applies only to downloads in excess of 15 downloads per year (added to the next due Annual Fee).

Credits:

The following credit are to be applied against the next due Annual Fee for contributions by the Library in a manner consistent with this Agreement during the calendar year preceding each Anniversary Date.

- Additions to the repository uploaded files: \$50 credit per content file, with completed due diligence metadata entry, that meets required specifications.

The foregoing credits will be applied against the next due Annual Fee for each AV Work that the Library uploads to ALVT in a manner consistent with this Agreement during the calendar year preceding each Anniversary Date when such Annual Fee is due. In no event may this credit exceed Five Hundred Dollars (\$500.00) per year.

This Fee Schedule is subject to the terms of the Agreement and is subject to review and modification as provided in the Agreement.