

ARTSTOR DIGITAL LIBRARY LICENSE AGREEMENT

This ARTstor Digital Library License Agreement (“Agreement”) is entered into by and between ARTstor Inc. (“ARTstor” or “Licensor”) and _____ (“Licensee”) as of the Agreement Date set forth in Attachment A, which Attachment A is attached hereto and incorporated herein by reference. In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Licensor and Licensee (the “Parties”) hereby agree as follows:

1. Definitions

“Access Software” means the software(s) used by Licensee and Authorized Users to access and make Permitted Uses (as defined in section 3.3 below) of the ARTstor Digital Library and ARTstor Content and any Local Content.

“Agreement Date” means the date written at the top of Attachment A, and is the date on which this Agreement takes effect.

“ARTstor Content” means any and all collections of digital images, catalog records, and/or other texts, and/or any and all portions or groups thereof, selected by ARTstor and appearing in the ARTstor Digital Library, in any medium or form, including digital images, catalog records, and/or other texts, and/or any and all portions or groups thereof, printed and/or downloaded from the ARTstor Digital Library. ARTstor Content does not include Local Content.

“ARTstor Digital Library” means an electronic database containing ARTstor Content and the Access Software, as well as any and all portions thereof, which is made available pursuant to this Agreement solely for Permitted Uses (as defined in section 3.3 below).

“Authorized Users” means any or all of the following categories of persons designated by Licensee to access and use the ARTstor Digital Library, and who are subject to the Terms and Conditions of Use: (a) individuals officially affiliated with Licensee (such as staff, faculty, enrolled students, volunteer staff, and affiliated researchers); (b) individuals not officially affiliated with Licensee but who have an educational or scholarly or similar association with Licensee (such as visiting researchers and lecturers); and (c) individuals physically present in the facilities of Licensee (“Walk-In Users”). Individuals who do not have an official or unofficial affiliation with Licensee (such as alumni or persons whose only association to Licensee is that they pay fees to use the physical facilities or services (such as users of a college library)), may only access the ARTstor Digital Library as Walk-In Users.

“Intellectual Property Rights” means any and all trademarks and trademark applications, issued patents and patent applications, copyrights and copyright registrations and applications, rights in ideas, designs, works of authorship, derivative works, and all other intellectual property rights, moral rights, neighboring or related rights, and/or rights of publicity owned by ARTstor and/or third parties with respect to the ARTstor Digital Library and/or ARTstor Content.

“Local Content” means images, texts, and other materials that are selected and obtained by Licensee and/or Authorized User(s) from a source other than the ARTstor Digital Library or ARTstor and that are accessed, displayed, reproduced, distributed, and used, and/or that are the subject of performances by, Licensee and/or Authorized User(s) utilizing the Access Software.

“Terms and Conditions of Use” means those terms and conditions governing access to and use of the ARTstor Digital Library by Authorized Users, and that appear on certain screen displays in the ARTstor Digital Library, or that may otherwise be provided to Authorized Users by ARTstor. The Terms and Conditions of Use may be amended from time to time for reasonable cause. Should there be changes to the Terms and Conditions of Use that materially conflict with the terms of this Agreement, ARTstor would provide Licensee with 30 days notice of such changes (which notice may be by electronic mail to Licensee’s primary and any secondary contact).

2. Grant of License

As of the Agreement Date, ARTstor grants to Licensee a nonexclusive, nontransferable license to access and use the ARTstor Digital Library, and to reproduce, distribute, display, make performances of, and use ARTstor Content, only for the Permitted Uses defined in this Agreement, and to sublicense those rights to Authorized Users in accordance with the terms of this Agreement. This license shall remain in effect for the term of the Agreement set forth in Attachment A.

3. Educational and Scholarly Uses that are Noncommercial in Nature.

- 3.1 Access and Use Limited to Authorized Users. Licensee shall use the ARTstor Digital Library and ARTstor Content obtained therefrom only as expressly permitted herein and shall take reasonable steps to ensure that the electronic database is accessed, displayed, and used in accordance with this Agreement.
- 3.2 Restricted Access to, and Distribution of, ARTstor Content. Licensee and/or Authorized Users may not distribute, make available, and/or attempt to make available any of the ARTstor Content (whether alone or incorporated into other materials) to persons and/or entities other than: (a) Licensee and/or its Authorized Users; and (b) the audience members at a scholarly or educational presentation, lecture, seminar, or similar activity conducted by Licensee and/or its Authorized Users (via displays and print hand outs only and subject to the international restrictions indicated below). Licensee and/or Authorized Users may also distribute and make available limited ARTstor Content that is incorporated in a work of an Authorized User to limited numbers of scholars, researchers, or curators for purposes of collaboration, comment, or similar educational or scholarly use, if such use and distribution conforms to the customary and usual practice in the field. ARTstor Content may not be incorporated into an unrestricted database or website, or made available to others (electronically or otherwise) except as permitted herein, whether that ARTstor Content is alone or incorporated into other materials.
- 3.3 Permitted Uses. The ARTstor Digital Library is available solely for educational and/or scholarly uses (including reproductions, distributions, displays and performances) that are noncommercial in nature. Subject to the terms of this Agreement, Licensee may make available the ARTstor Digital Library to Authorized Users, and Licensee and/or Authorized Users may access and use the ARTstor Digital Library and may reproduce, distribute, display and make performances with ARTstor Content, for the following Permitted Uses: (a) classroom instruction and related classroom activities; (b) student assignments and research (including course reserves); (c) research activities of faculty, scholars, and curators; (d) public display or public performance as part of a noncommercial scholarly or educational presentation, such as in an educational, cultural, or scholarly seminar, class, lecture, conference, exhibit, or workshop, or a similar noncommercial professional activity, if such use conforms to the customary and usual practice in the field; (e) use in a student, faculty, or curatorial portfolio, including non-public display thereof, if such use conforms to the customary and usual practice in the field; and/or (f) use in research or a dissertation, including reproductions of the dissertation provided such reproductions are only for personal use, library deposit, and/or use solely within the institution(s) with which the Authorized User and/or his or her faculty or curatorial readers are affiliated (collectively “Permitted Uses”).
- 3.4 Printing ARTstor Content from the ARTstor Digital Library. Licensee and/or Authorized Users may print ARTstor Content from the ARTstor Digital Library for Permitted Uses only. Licensee and/or Authorized Users may print only that amount of ARTstor Content that is reasonably necessary for Permitted Uses, and Licensee and/or Authorized Users may reproduce such copies in limited quantities as reasonably necessary for Permitted Uses. ARTstor Content may only be printed using the print function(s) appearing in the ARTstor Digital Library, which limits the resolution of such printed ARTstor Content, and which automatically displays text at the bottom of the print copies indicating that they are licensed for noncommercial educational and scholarly uses only (“Noncommercial Use Statement”). Licensee shall have no obligation to monitor or ensure that Authorized Users are printing copies of ARTstor Content using the print function(s) described herein.
- Printed ARTstor Content may not be made available to anyone other than: Licensee; Authorized Users; and other audience members at a scholarly or educational presentation, lecture, seminar, or similar activity and limited numbers of scholars, researchers, or curators to whom work by an Authorized User that incorporates ARTstor Content is made available for purposes of collaboration, comment, or similar educational or scholarly use, if such use conforms to the customary and usual practice in the field.
- 3.5 Downloading ARTstor Content From the ARTstor Digital Library. Licensee and/or Authorized Users may download ARTstor Content from the ARTstor Digital Library for Permitted Uses only, and may download only that amount of ARTstor Content that is reasonably necessary for Permitted Uses. ARTstor Content downloaded from the ARTstor Digital Library must be access restricted and may not be made available to anyone other than: Licensee; Authorized Users; and limited numbers of scholars, researchers, or curators to whom work by an Authorized User that incorporates ARTstor Content is made available for purposes of

collaboration, comment, or similar educational or scholarly use, if such use conforms to the customary and usual practice in the field. Licensee and/or Authorized Users may download ARTstor Content only through the download function(s) provided in the ARTstor Digital Library, although it is understood that Licensee shall have no obligation to monitor or ensure that Authorized Users are only downloading ARTstor Content using the download function(s). Except as set forth in this Agreement and/or in the Terms and Conditions of Use, Licensee and/or Authorized Users shall not download, export, or otherwise remove ARTstor Content from the restricted ARTstor Digital Library in any format or medium for any purpose.

- 3.6 Local Content. Licensee and/or its Authorized Users may access and use certain features of the Access Software to display, make performances of, reproduce, distribute and use Local Content, along with ARTstor Content (“Local Content Services”). When accessing and using the Local Content Services, Licensee agrees to display, make performances of, reproduce, distribute and use Local Content only in accordance with the terms of this Agreement. ARTstor does not select or pre-screen such Local Content, and acts as a conduit in relaying that Local Content to users selected by Licensee. Under no circumstances shall ARTstor be liable in any way for any such Local Content, including but not limited to, for any errors or omissions in any Local Content; for any loss, damage, claim, or liability of any kind incurred in connection with such Local Content, including the access, use, display, performance, reproduction, or distribution of such Local Content, or for any loss, claim, damage, or liability should such Local Content violate or infringe any third party rights (including without limitation any patent, trademark, trade secret, copyright or other proprietary rights) or any international, federal, state, or local law, statute, or regulation. Should, upon Licensee’s prior written consent, ARTstor decide to incorporate such Local Content into the ARTstor Digital Library and to make it available to all users licensing the ARTstor Digital Library and their Authorized Users, such Local Content shall be deemed ARTstor Content from the point at which ARTstor incorporates such Local Content into the ARTstor Digital Library.

Licensee hereby represents and warrants that it will not, and will not authorize others to, access or use the Local Content Services to: (a) upload, post, display, make performances of, or otherwise make available, distribute, reproduce or use any Local Content that violates or infringes any third party right (including without limitation any intellectual property or contractual rights) or that violates any international or domestic, federal, state or local law, statute or regulation or that is abusive or derogatory of others; (b) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Local Content transmitted through the Local Content Services; (c) upload, post, transmit or otherwise make available, display, make performances of, distribute, reproduce, or use any Local Content that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (d) circumvent, disable, or override any encryption features or other protections in the Access Software; (e) to spam or send or procure the sending of any unsolicited advertising or promotional material; and/or (f) intentionally interfere with or disrupt the Local Content Services or servers or networks connected to the Local Content Service.

ARTstor is required by law to expeditiously remove from its servers, or disable access to, Local Content where ARTstor learns or becomes aware that such Local Content infringes the copyright of a third party and to terminate a user’s access to the ARTstor Digital Library and/or the Local Content Services when that individual or institution repeatedly infringes another’s copyright. Consistent with these legal requirements, ARTstor reserves the right to expeditiously remove any Local Content, or links thereto, from its servers that allegedly infringe a third party’s copyright or the other provisions of this Agreement, and to terminate access to the Access Software and/or ARTstor Digital Library by an individual or institution who is a repeat infringer (although ARTstor would make reasonable efforts to collaborate with an institution to resolve such infringements before terminating such access, and would endeavor, to the extent practicable, to notify Licensee in advance before disabling access to Licensee’s Local Content). ARTstor shall in no way be held liable for terminating access to such Local Content or to the ARTstor Digital Library or for the failure to notify Licensee in advance of disabling access to or removing from its servers such Local Content. Notices to Licensee under this section shall be provided to the Licensee Primary and any Secondary Contacts as well as any Contact for Legal Notices listed in Exhibit A to the License Agreement, and may be sent by electronic mail. Notices to ARTstor under this section may be sent by electronic mail to the ARTstor Contact for Legal Notices. For more information about what should be included in notices pertaining to copyrights, please see the copyright statement on ARTstor’s website.

- 3.7 Prohibited Uses. In addition to all other prohibitions or restrictions imposed by this Agreement, Licensee and/or Authorized Users shall not: (a) access, use, reproduce, display, make performances, or distribute the ARTstor

Digital Library and/or the ARTstor Content for any commercial purpose whatsoever, including but not limited to fee-for-service use of the ARTstor Digital Library, or make any use, reproduction, display, performance, or distribution of the ARTstor Digital Library and/or ARTstor Content that exceeds or violates this Agreement and the Terms and Conditions of Use; (b) distribute and/or make available ARTstor Content or the ARTstor Digital Library to persons other than as expressly permitted herein; (c) provide and/or authorize access to the ARTstor electronic database, such as through the sharing of passwords, to persons or entities other than Authorized Users; (d) export, download, or print, or attempt to export, download, or print, substantial portions of the ARTstor Digital Library; (e) incorporate ARTstor Content into print or electronic materials that are for purchase or are disseminated for commercial purposes (such as by a scholarly or commercial press); (f) make any adaptation or modification of ARTstor Content obtained from the ARTstor Digital Library; (g) override, circumvent or disable any Access Software encryption features or software protections employed in the ARTstor Digital Library; and/or (h) use, reproduce, display, make performances of, or distribute the ARTstor Digital Library and/or ARTstor Content in any way that is not authorized under this Agreement and that infringes another's Intellectual Property Rights therein under the laws of any country.

- 3.8 Use of the Access Software. Use of Access Software means downloading, installing, executing, displaying, and/or using the Access Software in connection with the ARTstor Digital Library and/or in connection with accessing, displaying, and using the Local Content. Licensee may not circumvent or modify the Access Software, disable any licensing or control features of the Access Software, and/or decrypt, circumvent, or disable any encrypted features of the Access Software. Licensee shall not attempt or permit others to attempt to modify, adapt, translate, convert to another programming language, decompile, reverse compile, disassemble, or reverse engineer the Access Software or any components thereof, in whole or in part, for any purpose, unless expressly permitted in writing by ARTstor. No right, title, or interest in the Access Software is granted to the Licensee under this Agreement, other than the right to use the Access Software in connection with Permitted Uses of the ARTstor Digital Library as set forth herein. The Access Software is subject to change without notice; however, ARTstor will provide Licensee with reasonable notice (which may be in electronic form) of changes that materially impact the usability of or functions in the ARTstor Digital Library. It is understood that Licensee shall not have any obligation to monitor use of the Access Software by individual users.
- 3.9 Required Copyright Notices. Licensee shall not intentionally modify, obscure, or remove any copyright notice or other attribution included in the ARTstor Digital Library, nor authorize others to do so.
- 3.10 Public Domain Works and Works of the United States Government. Copyright is not claimed by ARTstor as to any work of the United States government, nor to any work that is in the public domain.

4. Proprietary Rights.

Licensee hereby recognizes and agrees that the ARTstor Digital Library, some ARTstor Content, and the Access Software are proprietary to ARTstor and/or third parties and are protected by intellectual property laws of the United States of America and of other countries. Licensee hereby represents that it will not, during the term of this Agreement, or any time thereafter, attach, dispute, or contest, indirectly or directly, ARTstor's rights in and title to the ARTstor Digital Library, nor assist others to do so. The ARTstor mark and logo, and other marks and trade names used to identify ARTstor, are or shall be protected by US and international trademark laws. Similarly, the Licensee's mark and logo, and other marks and trade names used to identify Licensee are or may be protected by US and international trademark laws. Neither Licensor nor Licensee may use the other's name or trademark(s) in any way likely to cause confusion as to the origin of goods or services, or to endorse or show affiliation with the other, except as specifically approved in writing. Notwithstanding the foregoing, ARTstor may use Licensee's name in brochures or other materials to identify Licensee as licensing the ARTstor Digital Library and Licensee is encouraged to use ARTstor's name to announce its use of the ARTstor Digital Library, and to inform users about the ARTstor Digital Library, provided that Licensee correctly identifies ARTstor as a registered mark under US and other laws in all of Licensee's written materials and supplies ARTstor with a copy of such announcements upon ARTstor's request.

5. Links to ARTstor and to Other Sites.

- 5.1 Links to the ARTstor Digital Library. Licensee may provide electronic links to the ARTstor Digital Library from Licensee's web page(s), provided such electronic links do not provide access to the ARTstor Digital Library in violation of the access provisions in section 3.1 above. ARTstor will provide assistance to Licensee in creating such links through supplemental online instructions. Licensee agrees to cooperate in testing the links and to make

changes in the appearance of such links as reasonably requested by ARTstor. ARTstor may request notification of the URL(s) of Licensee's web page(s) containing such links. Licensee shall not modify, manipulate, or create a derivative work of the ARTstor Digital Library other than in creating such links or as expressly permitted by ARTstor.

- 5.2 Links to Other Sites. ARTstor may provide links to other websites for the benefit or convenience of its users. ARTstor makes no representation or warranty of any kind, express or implied, with respect to such websites, and the linking to such websites does not constitute any kind of endorsement of such sites.

6. Delivery and Support.

- 6.1 Electronic Access. The ARTstor Digital Library will be stored at one or more locations in digital form and accessible by telecommunications links between such locations and Licensee and/or Authorized Users' workstations. ARTstor shall make the ARTstor Digital Library available online in digital form to Licensee and Authorized Users within a reasonable time from ARTstor's receipt of an executed copy of this Agreement, provided that Licensee has provided ARTstor with IP address domain information, as set forth in Attachment A.
- 6.2 Restricted Access. Access to the ARTstor Digital Library is restricted as set forth herein. Access to the ARTstor Digital Library will be limited and regulated through the use of IP address(es). To perform some optional, personal functions (such as saving image groups for subsequent retrieval), Licensee and/or Authorized Users may be required, through instructions automatically provided by the Access Software, to provide email addresses.

Licensee shall cooperate with ARTstor in the implementation of security procedures as they are developed. ARTstor may utilize monitoring or other technologies to monitor uses (including reproductions, displays, performances, and/or distributions) of the ARTstor Digital Library and ARTstor Content therein in accordance with its Privacy Policy. The Privacy Policy may be reasonably amended from time to time, provided that such changes shall only take effect following 30 calendar days after written notice has been sent to Licensee (which may be in electronic format addressed to the Licensee Primary Contact and any Licensee Secondary Contact on Attachment A hereto). Such Privacy Policy, as it may be so amended, is incorporated herein by reference.

- 6.3 Proxy Servers. Licensee shall promptly inform ARTstor if Licensee makes use of a proxy server to provide access to the ARTstor Digital Library, or if it becomes aware of a proxy server that is providing such access. ARTstor may terminate access without advance notice to an unauthorized and/or open proxy server, but will notify Licensee following the termination of such access.
- 6.4 Hardware and Internet Access. Licensee is solely responsible for establishing and maintaining hardware and Internet connections to provide access to, use, and to transmit and display, the ARTstor Digital Library to Authorized Users. Licensee understands that Access Software requiring downloading onto individual computers of a particular application and/or Internet browser software may be required to access or to use certain applications of the ARTstor Digital Library. Licensee understands and acknowledges that from time to time ARTstor may modify software and related components in the ARTstor Digital Library and that portions of such software and related components in the ARTstor Digital Library may migrate to other formats or be removed from the ARTstor Digital Library. ARTstor will provide Licensee with reasonable notice (which may be provided electronically) of such changes.

7. Security and Usage Data.

- 7.1 Protection of the ARTstor Digital Library and ARTstor Content Therein. Licensee shall use all reasonable efforts to protect the ARTstor Digital Library from any use that is not permitted under, or is a violation of, this Agreement and/or the Terms and Conditions of Use, and to educate and inform Authorized Users of the Terms and Conditions of Use. Licensee shall comply with, and take reasonable steps to effectuate, all reasonable security procedures required to protect the security of the ARTstor Digital Library and/or ARTstor Content therein. ARTstor and Licensee may from time to time consult on the establishment of further measures to inform Authorized Users of the availability of the ARTstor Digital Library and the Terms and Conditions of Use.
- 7.2 Additional Measures in the Event of a Violation or Suspected Violation. Licensee agrees to notify promptly ARTstor upon learning or being notified of any violation or suspected violation of this Agreement or of the Terms and Conditions of Use, to investigate and cooperate fully and promptly with ARTstor in investigating such known

or suspected violations, and to take other measures that ARTstor reasonably deems appropriate in any case involving knowing and willful violations. Additionally, in the event of a violation of the Terms and Conditions of Use, Licensee understands and agrees that: (a) ARTstor may impose further restrictions on access to, and downloading and printing from, the ARTstor Digital Library; (b) upon notice to Licensee except in exigent circumstances (when such notice is not required), ARTstor may suspend or terminate the access of the Internet Protocol (“IP”) address(es) from which such unauthorized use occurred; and/or (c) Licensee shall suspend or terminate such individual’s access to the ARTstor Digital Library upon ARTstor’s request. ARTstor may also consult with others and/or bring appropriate legal action concerning any unauthorized use or infringement of the Terms and Conditions of Use and/or this Agreement. ARTstor will not take any of the actions described in this paragraph without first notifying Licensee and providing Licensee with an opportunity to remedy such unauthorized use or infringement to ARTstor’s satisfaction.

- 7.3 **Monitoring and Gathering Usage Data.** To protect the ARTstor Digital Library against unauthorized uses and to learn about the uses made by users of the ARTstor Digital Library, ARTstor may monitor activity and use of the ARTstor Digital Library consistent with ARTstor’s Privacy Policy, as it may be amended from time to time as set forth in section 6.2. When not unduly burdensome to Licensee, the Parties agree to cooperate in gathering non-individual specific data on usage of the ARTstor Digital Library, and Licensee may provide such data to ARTstor on request. The Parties shall not disclose to others data from which an individual could be identified, unless such disclosure is reasonably necessary for pursuing a claim or investigation concerning major alleged violation(s) of the Terms and Conditions of Use or is in response to a subpoena, court order, or other legal proceeding. ARTstor agrees to provide periodically usage data to Licensee, in a form determined by ARTstor and as permitted herein. For more information on monitoring and gathering usage data, see ARTstor’s Privacy Policy.

Should Authorized Users seek to perform certain optional functions, such as, for example, saving and subsequently retrieving image groups from the ARTstor Digital Library, ARTstor may require them to provide information such as email addresses. Such data will not be provided to third parties unless such disclosure is reasonably necessary for pursuing a claim or investigation concerning major alleged violation(s) of the Terms and Conditions of Use or is in response to a subpoena, court order, or other legal proceeding.

8. Fees.

- 8.1 **License Fee.** Licensee shall make payments to ARTstor, under the terms set forth in Attachment A, for the license to the ARTstor Digital Library granted herein.
- 8.2 **Other Costs.** Licensee shall be solely responsible for all costs associated with establishing access to the ARTstor Digital Library, including but not limited to any hardware, and any telecommunications or other charges imposed by carriers, proprietary network operators, and/or Internet access providers, as well as for printing costs associated with printing ARTstor Content from the ARTstor Digital Library. Licensee shall also be solely responsible for all costs, fees, and taxes relating to Licensee’s or Authorized Users’ use of the ARTstor Digital Library.

9. Withdrawal of ARTstor Content from the ARTstor Digital Library.

In addition to the provisions set forth in section 3.6 herein, ARTstor may withdraw ARTstor Content from the ARTstor Digital Library for good cause shown. ARTstor would endeavor, to the extent practicable, to minimize any inconvenience to Licensee and Authorized Users caused by such withdrawal by, for example, seeking to withdraw ARTstor Content only at the conclusion of an academic semester (except in the event of an alleged infringement under section 3.6 herein). However, should ARTstor be unable to avoid such inconvenience, Licensee and Authorized Users shall in no way hold ARTstor liable for the withdrawal of such ARTstor Content from the ARTstor Digital Library.

10. Term and Termination.

- 10.1 **Term of Agreement.** This Agreement shall continue in effect for the period set forth in Attachment A hereto, and will be renewable in accordance with the terms of Attachment A.
- 10.2 **Termination.** In addition to the other rights of termination set forth in this Agreement, in the event that either Party believes that the other Party has materially breached any obligations, representations, or warranties under this Agreement, such Party shall so notify the breaching Party in writing. The breaching Party will have 60 days

from the receipt of such notice to cure the alleged breach and to notify the non-breaching party in writing that such cure has been effected. If the breach is not cured within the 60-day period, the non-breaching party shall have the right to terminate the Agreement upon written notice. In addition, ARTstor may terminate this Agreement and the licenses herein within 60 days written notice without the opportunity to cure if, in ARTstor's reasonable opinion, the cumulative effect of violations of Terms and Conditions of Use by Authorized Users has caused or threatens to cause material harm to ARTstor and/or its ARTstor Content and/or software providers and/or if there are repeated infringements under section 3.6 herein. Additionally, Licensee may terminate this Agreement upon not less than 90 days written notice before the end of the then-current term should Licensee no longer have the funds to participate in the ARTstor Digital Library, and effective upon 5 business days upon the receipt of such notice by ARTstor, this Agreement (and any hosting agreement between ARTstor and Licensee with respect to local content) would terminate and ARTstor would return a pro -rata refund of the Licensee's Annual Access Fee(s) only for the remaining portion of that year.

- 10.3 Discontinuing Access to ARTstor Content Upon Termination of this Agreement. Upon the termination or expiration of this Agreement, and in the absence of another agreement executed between the Parties, all online access to the ARTstor Digital Library by Licensee and its Authorized Users shall be terminated (and any Local Content of Licensee shall be removed from ARTstor's servers). Licensee and/or Authorized Users may keep only those print or electronic copies of ARTstor Content appearing in lesson plans or in other pedagogical, educational, or scholarly materials for personal, noncommercial uses as permitted by the laws of the country where such uses are made, provided that they comply with the Terms and Conditions of Use. The Terms and Conditions of Use and the obligation to limit use of print or electronic copies of ARTstor Content to those uses permitted thereunder shall survive the termination of this Agreement.
- 10.4 Survival. The provisions of Sections 4, 10, 11, 12.5, 12.6, and 13 and the Terms and Conditions of Use shall survive any termination or expiration of this Agreement and continue in effect, except that 12.5 shall survive any termination and continue in effect only for Authorized Uses that occur prior to such termination.

11. Notices.

All notices given pursuant to this Agreement shall be in writing and in English and may be delivered by hand or by recognized overnight carrier and shall be deemed received upon such delivery, unless an alternate form of notice is expressly permitted herein.. Notice shall be addressed and delivered to the persons and addresses set forth in Attachment A. If any notice is sent by facsimile, confirmation copies must be sent. Either Party may from time to time change its Notice information by written notice to the other Party.

12. Representations, Warranties, and Disclaimers.

- 12.1 Authority to Enter into Agreement. Each Party represents and warrants that it has the authority to enter into this Agreement, and to bind that Party to the terms and conditions herein. Each Party further represents and warrants that it has caused this Agreement to be executed by a duly authorized representative. Licensee represents and warrants that the contact information provided in all attachments to this Agreement and all updates thereto ("Contact Information") are provided with the full consent of the individuals identified and that the use of such information in connection with the performance of this Agreement shall not constitute a violation of any privacy or related law, regulation, or policy. It is understood that the Contact Information shall be used solely in connection with the performance of this Agreement and provision of services herein, including but not limited to communicating with Licensee about Licensee's access to and use of the ARTstor Digital Library.
- 12.2 Non-Profit Entity. Licensee represents and warrants that it is organized and operated for charitable, scientific, literary or educational purposes, or that it is a government entity, and that no part of the net earnings of such organization inures to the benefit of any private shareholder or individual.
- 12.3 Maintain Security. Licensee represents and warrants that it shall exert reasonable efforts to maintain sufficient security with respect to any and all IP addresses, usernames, passwords, and/or users' email addresses. Likewise, ARTstor represents and warrants that it shall exert reasonable efforts to maintain sufficient security with respect to any and all IP addresses, usernames, passwords, and/or users' email addresses provided by Licensee such that such information will only be used as needed for making available the ARTstor Digital Library or to investigate or prevent suspected violations or violations as set forth under section 7.2.

- 12.4 Additional IP Addresses. Licensee represents and warrants that it is providing no IP addresses to ARTstor that pertain to any campus or institution other than those listed or indicated on Attachment A of this Agreement or for which access has otherwise been agreed to in writing by ARTstor. ARTstor reserves the right to assess additional fees and to require additional license terms or separate license agreements in the event that Licensee provides IP addresses pertaining to institutions or campuses other than those listed or indicated on Attachment A, or in the event that Licensee seeks to add additional institutions or campuses, or distance education programs, other than those currently listed in Attachment A.
- 12.5 Disclaimer of Liability and Indemnification. ARTstor shall in no way be liable, and Licensee agrees that it shall not hold ARTstor liable, for any loss, injury, claim, liability, damages, costs, and/or attorneys fees for any and all violations and/or breaches of this Agreement by Licensee, its agents, employees, officers, directors, and/or breaches of the Terms and Conditions of Use by its Authorized Users, and/or any and all uses by Licensee, its agents, employees, officers, directors, and/or its Authorized Users that are unauthorized and/or exceed this Agreement or the Terms and Conditions of Use.

ARTstor agrees to indemnify, defend, and hold harmless Licensee, its agents, employees, officers and directors, and its Authorized Users for all costs, damages, reasonable attorneys fees, and other expenses arising out of any third party's threatened claim(s) or claim(s) of infringement of copyrights, patents, or trademarks brought against Licensee and/or its Authorized Users, but only if such threatened claim(s) or claim(s) arise out of Permitted Uses of the ARTstor Digital Library. Notwithstanding the foregoing, ARTstor expressly disclaims any and all liability, and in no event shall ARTstor be liable, or indemnify Licensee and/or Authorized Users, for claims to the extent that they are related to: (a) adaptations and/or modifications of ARTstor Content; (b) links between ARTstor and other sites, and/or content on those sites; (c) content in, and/or uses, reproductions, displays, performances, or distributions of, Local Content and the Local Content Services; (d) breaches by Licensee, its agents, employees, directors, officers, and/or Authorized Users of this Agreement and/or uses, reproductions, displays, performances, or distributions made of the ARTstor Digital Library and/or its ARTstor Content that exceed and/or violate the terms of this Agreement and/or the Terms and Conditions of Use, whether or not such uses, reproductions, displays, performances, or distributions are permitted by law under US or other countries' laws; and/or (e) any and all uses, reproductions, displays, performances, or distributions made of ARTstor Content obtained from the ARTstor Digital Library following the termination or expiration of this Agreement.

In connection with these indemnification obligations, ARTstor will control the defense of such claims and/or threatened claims, including the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claims and/or threatened claims, and Licensee shall: (i) immediately notify ARTstor upon learning of any such claim and/or threatened claim; (ii) provide to ARTstor such information respecting such claim and/or threatened claim as ARTstor shall reasonably require; (iii) take all such steps as ARTstor shall reasonably request to preserve and protect any defense to such claim and/or threatened claim at ARTstor's expense; and (iv) not make any admission or seek to compromise any claim and/or threatened claim without the consent of ARTstor. Licensee shall have the right to participate in (but not control) the defense of any such claims or threatened claims with counsel of its selection at its sole expense.

- 12.6 Disclaimer and Limitation of Liability. **OTHER THAN THE EXPRESS WARRANTIES AND INDEMNIFICATIONS STATED IN THIS SECTION 12, THE ARTSTOR DIGITAL LIBRARY AND THE ACCESS SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS, AND ARTSTOR AND ANY AND ALL THIRD PARTY CONTENT AND SOFTWARE PROVIDERS AND/OR LICENSORS ("CONTENT PROVIDERS") DISCLAIM TO THE FULLEST EXTENT OF THE LAW ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS OF ANY KIND (EXPRESS, IMPLIED, ORAL, OR WRITTEN) RELATING TO THE ARTSTOR DIGITAL LIBRARY, ARTSTOR CONTENT, LOCAL CONTENT, THE ACCESS SOFTWARE, OR ANY PARTS THEREOF, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE. ARTSTOR AND ALL CONTENT PROVIDERS MAKE NO WARRANTIES WITH RESPECT TO ANY HARM THAT MAY BE CAUSED BY THE TRANSMISSION OF A COMPUTER VIRUS, WORM, TIME BOMB, LOGIC BOMB, OR OTHER SUCH COMPUTER PROGRAM, EXCEPT THAT ARTSTOR WILL EXERCISE A REASONABLE LEVEL OF CARE IN AN ATTEMPT TO PREVENT SUCH OCCURRENCES. ARTSTOR AND ALL CONTENT PROVIDERS FURTHER DISCLAIM ANY LIABILITY AND MAKE NO WARRANTIES WITH RESPECT TO ANY ERRORS OR OMISSIONS IN THE ARTSTOR CONTENT, LIABILITY UNDER LIBEL LAWS,**

INFRINGEMENT OF RIGHTS OF PUBLICITY AND PRIVACY, MORAL RIGHTS, RELATED AND/OR NEIGHBORING RIGHTS, AND/OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION; AND/OR FURTHER DISCLAIM ANY LIABILITY AND MAKE NO WARRANTIES WITH RESPECT TO ANY AND ALL CLAIMS AND/OR THREATENED CLAIMS OF ANY KIND (INCLUDING BUT NOT LIMITED TO INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT CLAIMS AND/OR THREATENED CLAIMS) RELATING TO: LINKS BETWEEN ARTSTOR AND OTHER SITES AND/OR THE CONTENT ON SUCH LINKED SITES; LOCAL CONTENT AND THE LOCAL CONTENT SERVICES; ADAPTATIONS AND/OR MODIFICATIONS OF ARTSTOR CONTENT OR LOCAL CONTENT; ANY AND ALL USES, REPRODUCTIONS, DISPLAYS, PERFORMANCES, AND DISTRIBUTIONS THAT EXCEED OR VIOLATE THE PERMITTED USES (WHETHER PERMITTED BY THE LAWS OF ANY JURISDICTION OR OTHERWISE) AND/OR ANY USE(S), REPRODUCTIONS, DISPLAYS, PERFORMANCES, AND DISTRIBUTIONS MADE OF ARTSTOR CONTENT AFTER THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

- 12.7 Unavailability of ARTstor Digital Library. ARTstor shall try to provide continuous availability of the ARTstor Digital Library online. However, Licensee recognizes that the ARTstor Digital Library may not be available from time to time due to maintenance of the server(s), the installation or testing of software, the loading of ARTstor Content as it becomes available, and downtime relating to equipment or services outside the control of ARTstor including but not limited to public or private telecommunications services or internet nodes or facilities, and, except as set forth in section 12.5, ARTstor shall not be held liable for any loss, injury, claim, liability, or damage of any kind resulting from the unavailability of the ARTstor Digital Library or the Access Software, interruption of the services provided hereunder, or arising out of, or in connection with, Licensee's use, display, performances of, reproduction, distribution, or the uses, displays, performances of, reproductions or distributions made by Authorized Users or other users of the ARTstor Digital Library. If the ARTstor Digital Library fails to operate in conformance with the terms of this Agreement, Licensee shall promptly notify ARTstor, and ARTstor's sole obligation shall be to repair the nonconformity. Except as set forth in section 12.5, in no event shall ARTstor's liability exceed the fees paid to ARTstor by Licensee.
- 12.8 Laws and Jurisdiction of the United States of America Controlling. This Agreement shall be interpreted and construed according to, and governed by, United States federal law and the laws of the state of New York within the United States, as applicable, excluding any such laws that might direct the application of the laws of another jurisdiction. The Parties expressly exclude, if applicable, the application of the United Nations Convention on Contracts for the International Sale of Goods. Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be subject to the exclusive jurisdiction of the courts of the United States of America, excluding any laws that might direct jurisdiction to courts outside of the United States of America.
- 12.9 Discontinuance of ARTstor. ARTstor intends to maintain the ARTstor Digital Library and to make it available for noncommercial educational and scholarly purposes on an ongoing basis. However, should exigent circumstances so require, ARTstor reserves the right to discontinue and/or cease operating the ARTstor Digital Library. Should ARTstor discontinue and/or cease operating the ARTstor Digital Library, it would provide notice to Licensee and other users of the ARTstor Digital Library, and would make efforts to transfer the ARTstor Digital Library to another nonprofit institution and to have it made widely available for noncommercial educational and scholarly purposes. However, Licensee recognizes that such transfer may not be possible and agrees that ARTstor shall not be liable whatsoever should ARTstor cease to exist and should such transfer not be made.

13. Miscellaneous.

- 13.1 Entirety of the Agreement. The terms and conditions of this Agreement supersede all prior oral and written Agreements between the Parties with respect to the subject matter of this Agreement and shall constitute the entire Agreement between the parties with respect to the matters contained herein. It is understood, however, that the terms and conditions of this Agreement shall not supersede or modify any other written agreement between the Parties concerning provision of ARTstor Content by Licensee for the ARTstor Digital Library or similar matters; any and all such agreements shall continue in full force and effect in accordance with their terms. This License Agreement shall not be modified or amended except by writing duly executed by authorized representatives of the parties (except that the Privacy Policy may be amended from time to time, as set forth in section 6.2).

- 13.2 English Language Version Controlling. The English language version of this Agreement shall be controlling over any other version.
- 13.3 Duty to Carry Out Intent and Purpose of Agreement. The parties hereto agree to execute, acknowledge, and deliver all such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the intent and purposes of this Agreement.
- 13.4 No Assignment and No Third Party Beneficiary Rights. Neither Party to this Agreement shall assign, transfer, subcontract, or sublicense this Agreement or any of the rights and obligations hereunder, without the prior consent of the other Party. Notwithstanding the foregoing, ARTstor reserves the right to use fee-for-service entities to perform specific services on behalf of ARTstor, provided that such entities are obligated to comply with the applicable terms and conditions herein (including but not limited to terms relating to security and privacy). This Agreement has been executed for the sole benefit of the Parties that are signatories to this Agreement and is not intended for the benefit of any third party, regardless of any laws to the contrary. The Parties expressly disclaim the creation of any third party beneficiary rights under this Agreement and agree that no third party shall have any rights under this Agreement.
- 13.5 No Agency, Joint Venture or Partnership. Nothing contained herein shall be deemed to create an agency, joint venture, or partnership relationship between the Parties.
- 13.6 Waiver or Invalidity of any Provision or Breach. Waiver of any provision herein shall not be deemed to be a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement. If any provision or provisions of this Agreement are held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 13.7 Force Majeure. No Party shall be in breach of this Agreement if a failure to perform an obligation hereunder results from a condition(s) that is beyond the Party's reasonable control, including, but not limited to strikes, labor disputes, terrorist acts, or governmental requirements.
- 13.8 Use Outside of the United States of America. Access by Licensee and/or its Authorized Users to the ARTstor Digital Library outside of the United States of America will be through ARTstor servers housed in the United States of America, or such other server(s) as may be determined by ARTstor. Licensee understands that performance of the ARTstor Digital Library when accessed outside of the United States of America is subject to available transmission bandwidth and other factors beyond ARTstor's control, and may not equal performance of the ARTstor Digital Library when accessed within the United States of America. Licensee shall comply with all applicable laws and regulations in its exercise of this License. Licensee represents and warrants that it shall effect or obtain all non-U.S. governmental or regulatory filings, registrations, and approvals required in connection with this Agreement ("Approvals"), and shall pay any costs associated therewith. Licensee's failure to comply with all applicable laws and regulations, or to effect or obtain Approvals, shall constitute material breach; Licensee agrees to indemnify ARTstor for any costs incurred by ARTstor arising therefrom. Licensee shall inform ARTstor of any laws or regulations of Licensee's country that require any change to this Agreement. ARTstor may terminate this Agreement if warranted by a change in any such laws or regulations.
- 13.9 Counterparts. This Agreement and any Amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one agreement.

[Signature page and Attachment A to follow]

ARTstor Digital Library License Agreement

IN WITNESS THEREFORE, the parties have caused this Agreement to be executed as of the Agreement Date in Attachment A hereto.

ARTstor Inc. Licensee: _____

Name: _____ Name: _____

Printed: Gretchen Wagner Printed: _____

Title: General Counsel and Secretary Title: _____

Date: _____ Date: _____

ATTACHMENT A
ACCESS INFORMATION AND PAYMENT TERMS

This Attachment A is an addendum to the ARTstor Digital Library License Agreement, and incorporates by reference all of the terms of the ARTstor Digital Library Licensee Agreement between ARTstor and the Licensee listed below.

(Please type or print clearly)

Licensee (Institution Name): _____
Licensee Address: _____

Agreement Date: _____

Term of Agreement and Available for pilot project. Beginning and end dates of pilot specified by ARTstor:

Renewal Terms: _____

Contact Information: *Please ensure this information remains current by providing regular updates.*

Licensee Primary Contact:
*Main contact between ARTstor and Licensee
Responsibilities include overseeing subscription*

Attn: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
E-Mail: _____

Licensee Secondary Contact (optional):
Assists in overseeing subscription

Attn: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
E-Mail: _____

Licensee Contact for Legal Notices:

Attn: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

Licensee User Support Contact (Optional):

*This contact's name, email address and/or telephone
Number will be made available through the ARTstor website
as the person to reach for local user help.*

Attn: _____
Title: _____
Address: _____

Licensee Technical Contact:
Responsible for providing access information to ARTstor

Attn: _____
Title: _____
Address: _____

Telephone: _____
Facsimile: _____
E-Mail: _____

ARTstor Primary Contact:

User Services
ARTstor Inc.
140 East 62nd Street
New York, NY 10021
Telephone: 212-838-8400
Facsimile: 212-888-4172
Email: userservices@artstor.org

ARTstor Contact for Legal Notices:

Gretchen Wagner
General Counsel & Secretary
ARTstor Inc.
140 East 62nd Street
New York, NY 10021
Telephone: 212-838-8400
Facsimile: 212-888-4172
Email: gaw@artstor.org

Telephone: _____
Facsimile: _____
Email: _____

If this license is to cover multiple campuses or locations, please list the campuses below:

Note: ARTstor may consider certain campuses or locations to be separate institutions, and fees and license terms will be determined accordingly.

IP Information (addresses or domain ranges for computers at your institution(s)):

Note: If IP information is not available upon completing this Agreement, ARTstor staff will contact the Technical Contact listed above to obtain the information and initiate access. ARTstor reserves the right to delay access if adequate IP information is not provided.

Are you currently using a proxy server to provide access to restricted resources? Yes _____ No _____

If yes, please indicate the type of proxy server: _____

If yes, please provide the IP information of the proxy server: _____

If yes, please also provide the URL of the web page that offers information about how to use the proxy:

Do you have plans to use a proxy server in the future? Yes _____ No _____

Do you provide to users any other means of access to restricted resources from machines outside of your institution's IP domain? Yes _____ No _____. If yes, please describe. _____

Payment Terms:

Not applicable for pilot period.

ARTSTOR LICENSE AGREEMENT INSTRUCTIONS AND FAQ'S

What is meant by Licensee on Page 1?

The name of the Licensee should be printed completely in the space provided. If Licensee is a governing body and not necessarily the campus that will be participating in ARTstor, please place the complete name of that governing body here.

What if I want to make changes to the Agreement?

We encourage you to look over the Agreement to ensure that your institution can abide by the terms and conditions of use. You can suggest changes to the Agreement in writing via e-mail to participation@artstor.org. Your suggested changes will be vetted by our Legal Counsel and sent back to your institution with our responses.

Who should sign the Agreement?

The Agreement should be signed on page 11 by someone who is authorized to legally bind the institution to the terms and conditions of use outlined in the Agreement.

What is the Agreement Date on page 12?

The Agreement Date is the date that you have completed the Agreement. This date does not correspond to the date that you will begin to access ARTstor.

Who is the primary contact?

The Primary Contact should be the first person that ARTstor should contact if any questions arise regarding your use of the Library or other general questions. This person will also receive the invoice and will receive regular correspondence from ARTstor.

Who is the secondary contact?

This contact is optional. This person can be the second person for ARTstor to contact if the Primary Contact is not available.

Who is the Legal Notice Contact?

The Legal Contact is usually the institution's legal counsel or someone who is authorized to negotiate agreements on behalf of the institution, or someone who can answer legal questions for the institution.

Who is the Technical Contact?

The Technical Contact should be someone we can contact with questions about IP addresses and the technical configurations of your campus terminals.

Who is the Licensee User Support Contact?

This contact's name, email address and/or telephone number will be made available through the ARTstor website as the person to reach for local user help.

What if there is more than one campus being licensed to use ARTstor?

There is a section on the top of page 13 to list multiple campuses. However, institutions may be assessed additional fees for multiple campuses. Please consult ARTstor's Library Relations group if you have any questions.

How does ARTstor authenticate campuses?

On page 13 of the license agreement there is a place to list IP addresses for the machines on your campus that should be granted access. If you do not know these addresses please consult your technical staff at the institution. We will not be able to grant you access without this information.

Can students/faculty access ARTstor remotely (off-campus)?

If your institution has a proxy server, students and faculty can access ARTstor from off-campus. On page 13 of the license agreement there is a place to list your proxy server and your proxy server IP address. You will also need to provide the URL of the web page that offers the information about how to use the proxy.

Can ARTstor provide remote access without a proxy server?

If your institution provides other means of access to restricted resources from machines not included in the IP addresses you already provided, you can describe those means in the section provided on page 13. We will do our best to work with your systems to the extent practicable.

There is also a system within ARTstor's software that allows registered users who authenticate from a valid IP address to continue to access ARTstor remotely for a period of, 14 days before they are required to re-authenticate. Please feel free to contact ARTstor if you have questions about this option prior to gaining access to the Digital Library.

Where do I send the Agreement?

ARTstor will need two completed License Agreements with original signatures on both, mailed to the following address:

ARTstor Library Relations
149 Fifth Avenue, 8th Floor
New York, NY 10010

In order to hasten the process, you can fax pages 1, 11, 12, and 13 to 212-358-6499 but two sets or originals must still be sent by mail.

Additional Questions?

Please contact Library Relations at:
212-358-6400 or participation@artstor.org