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- 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.

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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.

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

Licensee: _____	ARTstor Inc.
Signature: _____	Signature: _____
Printed: _____	Printed: Gretchen Wagner
Title: _____	Title: General Counsel and Secretary
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: \_\_\_\_\_  
\_\_\_\_\_

Term of Agreement and Renewal Terms: Initial three-year term, automatically renewable upon payment for additional one-year terms.

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

Licensee Primary Contact (required):  
Main contact between ARTstor and Licensee  
Responsibilities include overseeing subscription  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Licensee Technical Contact (required):  
Responsible for providing access information to ARTstor  
Attn: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Licensee User Support Contact (required):  
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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Licensee Contact for Legal Notices (optional):

Attn: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Licensee Contact for Billing Notices (required):

Attn: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

ARTstor Primary Contact:

User Services  
ARTstor Inc.  
151 East 61<sup>st</sup> Street  
New York, NY 10065  
Telephone: 212-500-2400  
Facsimile: 212-500-2401  
Email: userservices@artstor.org

ARTstor Contact for Legal Notices:

Gretchen Wagner  
General Counsel and Secretary  
ARTstor Inc.  
151 East 61<sup>st</sup> Street  
New York, NY 10065  
Telephone: 212-500-2400;  
Facsimile: 212-500-2424  
Email: gaw@artstor.org

Agreement Date (date on which Licensee will have access to ARTstor) (To be completed by ARTstor):  
\_\_\_\_\_

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.

IP Addresses: \_\_\_\_\_

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: \_\_\_\_\_

Are all of the above IP addresses static and restricted to use only by your institution? Yes \_\_\_\_\_ No \_\_\_\_\_

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. \_\_\_\_\_

If you are a museum, did you complete a Network Performance Test (contact [participation@artstor.org](mailto:participation@artstor.org) for details)?

Yes  No

**Payment Terms:**

Full Time Equivalent (FTE) Enrollment ( <i>undergraduate plus graduate; to be completed by Licensee</i> ): _____
Value Added Tax (VAT): ( <i>to be completed by Licensee</i> ) _____
ARTstor Classification: ( <i>to be completed by ARTstor</i> ) _____
Archive Capital Fee (ACF): ( <i>to be completed by ARTstor</i> ) _____
Annual Access Fee (AAF): ( <i>to be completed by ARTstor</i> ) _____

The total Archive Capital Fee shall be due and payable sixty (60) days after the date of invoice. Licensee shall be invoiced for the total Annual Access Fee indicated above on or about the beginning of every calendar year during the initial and renewal terms of this Agreement, which shall be due and payable sixty (60) days after the date of invoice. The above total Annual Access Fee for the first year shall be prorated to reflect the number of months remaining in the calendar year following the date access to the ARTstor Digital Library is established. The Annual Access Fee is subject to reasonable annual increases.

All payments provided for in this Agreement shall be paid in United States Dollars, in an amount to be calculated and established at the time payment is due such that after deduction for any taxes, assessments or charges levied, assessed or

imposed which Licensee, ARTstor or any other party shall be required to pay or withhold in respect to or calculated with reference to such amount, the remainder actually received by, and due and payable to ARTstor, shall be the amounts specified in this Agreement. Any payments made more than sixty (60) days after they are due and payable shall be subject to a 10% annual interest charge. All payments shall be made by credit card or check payable to ARTstor Inc., or by mutually acceptable form of wire transfer.

Should, at any time, payments required of Licensee be subject to government regulations or prohibitions, Licensee shall use its best efforts to obtain such governmental authorization as may from time to time be required by applicable law in order to promptly and duly meet the payment obligations set forth above. If such authorization is obtained, payments due shall be paid promptly. In the event any law or regulation for the time being in force shall prohibit or restrict the transfer of part or all of such payments, Licensee shall deposit in national currency, at the governing rate of exchange, any sum or sums that may become due and payable to the credit of ARTstor with such bank or other institution, if permitted, as ARTstor may direct. In these instances, Licensee will deliver to ARTstor the certificate of deposit by Licensee in the account of ARTstor of any payments due. Nothing contained in this provision shall be construed to relieve Licensee of its obligations to make payments and to be diligent in its efforts to remit all payments required under this Agreement to ARTstor in United States currency whenever there are no legal impediments.

## **ARTSTOR LICENSE AGREEMENT INSTRUCTIONS AND FAQs**

### **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](mailto: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 on which this Agreement will take effect, which is the day we provide you with access to the Digital Library. Please indicate the date that you would like your access to be initiated and note that we may not be able to fulfill your request, but will do our best to turn your access on in a timely fashion.

### **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 Licensee User Support contact?**

This contact is also required (but can be the same person as the Primary contact). There are sections in ARTstor software where end users at a given institution are referred to a contact on the campus to receive special access codes and permissions within the Digital Library. The User Support contact will be indicated in these sections. The User Support contact will also receive regular updates from ARTstor.

### **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 Legal Notice contact?**

The Legal Contact is usually the institution's legal counsel or someone who is authorized to receive formal legal notification under this agreement.

### **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 users?**

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 users 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 90 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  
151 East 61<sup>st</sup> Street  
New York, NY 10065

In order to hasten the process, you can fax pages 1, 11, 12, and 13 to 212-500-2401 but two sets or originals must still be sent by mail.

**Additional Questions?**

Please contact Library Relations at:  
212-500-2400 or [participation@artstor.org](mailto:participation@artstor.org)