

SHARED SHELF TERMS AND CONDITIONS OF USE

By accessing and/or using Shared Shelf, you accept and agree to abide by the following Terms and Conditions of Use (the "Terms and Conditions of Use" or the "Agreement"):

1. **Shared Shelf Licenses.** Shared Shelf consists of a web-based content management, use and cataloging software platform, with related software tools and services ("Shared Shelf" and/or "Shared Shelf Software"). ARTstor hereby grants you a limited, nonexclusive license to access and use Shared Shelf in the manner set forth in these Terms and Conditions of Use (the "License"), for the period in which your institution subscribes to Shared Shelf. You may not sublicense, assign, or transfer this License, and any attempt at such sublicense, assignment, or transfer is automatically void. This license shall terminate upon the expiration or termination of your institution's subscription to Shared Shelf, or as otherwise set forth herein.

To the extent you upload content to Shared Shelf ("Your Content"), you hereby grant ARTstor a free-of-charge, nonexclusive license for the period of time in which Your Content is posted to or made available through Shared Shelf to reproduce, distribute, modify and adapt, display and make performances of Your Content, solely for the purpose of facilitating your access to, use of, and (to the extent you share Your Content) your sharing of Your Content through Shared Shelf. Nothing herein is intended to give ARTstor any ownership rights in Your Content.

2. **Your Conduct and Use of Shared Shelf.** By accessing or using Shared Shelf, you represent and warrant that you will not, and will not authorize others to: (a) post, reproduce, modify or adapt, distribute, display or make performances of any content or other materials on Shared Shelf, or otherwise use Shared Shelf, in a manner that violates or infringes any third-party right(s) (including without limitation any intellectual property or contractual rights), or that violates any applicable international, federal, state or local law or regulation; (b) modify, obscure, or remove ARTstor or third-party copyright, trademark or other intellectual property notices; (c) use Shared Shelf to upload, reproduce, transmit or distribute any software viruses or other computer code, files or programs designed to interrupt, destroy, degrade or limit the functionality of any computer software, hardware, data, system or telecommunications equipment; (d) circumvent, disable or override any encryption features or other protections in Shared Shelf; and/or (e) intentionally disrupt Shared Shelf or servers or networks connected to Shared Shelf. ARTstor may at any time remove from the ARTstor servers any of Your Content, or other content or materials, that violate the terms of this section, and take all other reasonable steps to enforce the terms of this section, including terminating your access to Shared Shelf. Notwithstanding the foregoing, nothing herein is intended to limit the application or scope of the United States Fair Use Doctrine or other copyright exceptions or limitations under United States or other countries' laws.
3. **Shared Content and Shared Forums.** ARTstor may make available through Shared Shelf certain Shared Forums, such as blogs, wikis, or other shared spaces that are accessible to all Shared Shelf participants or that are openly accessible without access limitations via the Internet as a service to encourage the exchange of information or ideas among Shared Shelf participants. Any materials or content of any kind posted to or shared through such Shared Forums are defined as "Shared Content." Notwithstanding the foregoing, Shared Content expressly excludes content from the ARTstor Digital Library, as well as your institution's content being hosted on Shared Shelf, unless an authorized administrator from your institution has shared your institution's content via those Shared Forums.

You represent and warrant that all Shared Content that you post to or share via Shared Forums shall not infringe or violate any third party right of any kind. ARTstor shall not in any way be liable, and You agree to hold ARTstor harmless, for such Shared Forums, Shared Content, and for any use of Shared Content, including without limitation the distribution, display, performance, reproduction, adaptation or modification of Shared Content, or the removal of such Shared Content from Shared Shelf or Shared

Forums. ARTstor does not control, takes no responsibility for, makes no representations or warranties about, and does not endorse, any Shared Content, or any third-party sites or materials accessible through links in Shared Shelf. Should you post Shared Content to such Shared Forums, you automatically grant a perpetual, worldwide, nonexclusive, free-of-charge license to all individuals and institutions accessing that Shared Content to reproduce, distribute, make public performances of, publicly display, and make adaptations or modifications of such Shared Content for the purposes for which such Shared Content was originally posted, and all related uses. ARTstor reserves the right to remove Shared Content should such Shared Content violate these Terms and Conditions of Use or to facilitate the administration of Shared Forums, and to discontinue any Shared Forum and remove Shared Content made available through that Shared Forum at any time.

Notwithstanding the foregoing, ARTstor may make available through Shared Forums certain controlled vocabularies or other content that is proprietary to third parties, as a service to Shared Shelf participants. You agree to comply with any third party terms of use associated with those controlled vocabularies or other content that are displayed or otherwise made available through the Shared Shelf software interface.

4. **Incorporation of Your Content into the ARTstor Digital Library and/or Images for Academic Publishing.** Should you seek to make Your Content available through the ARTstor Digital Library, or through the Images for Academic Publishing service provided by ARTstor, and should ARTstor seek to incorporate Your Content into such site(s), you and ARTstor will enter into a separate agreement setting forth the terms relating to the sharing of such content through such site(s).
5. **Maintaining Security of Shared Shelf.** You are responsible for maintaining the confidentiality and security of your username and/or password (if such are created), and for all usage or activity by you of Shared Shelf, and you hereby agree not to provide access to Shared Shelf to anyone else (other than as expressly instructed by your institution). You may not set up a proxy or anonymous remailer for purposes of allowing access to Shared Shelf.
6. **Suspected Violations of these Terms and Conditions or Unauthorized Uses.** You agree to promptly notify ARTstor and the institution with which you are affiliated, or whose facilities you are using, of any known or suspected unauthorized use(s) of your account or Shared Shelf, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure or use of your username, password, and/or IP address. Any use of Shared Shelf beyond the scope or in violation of these Terms and Conditions of Use, knowing use of any password or username of another, or any fraudulent, abusive, or otherwise illegal activity, may be grounds for termination of your access to Shared Shelf, without notice and at ARTstor's sole discretion.
7. **ARTstor As an Online Service Provider under the Digital Millennium Copyright Act (DMCA).** You acknowledge and agree that ARTstor does not screen, select or edit Your Content and/or Shared Content, and in making available Shared Shelf, is acting as an online service provider within the definition of the Digital Millennium Copyright Act at 17 USC § 512 (the "DMCA"). You agree to hold ARTstor harmless in connection with any claim, threatened or asserted claim, damage, loss or liability of any kind in connection with Your Content and/or Shared Content, and/or any portion thereof, including without limitation any use, display, performance, reproduction, sharing, adaptation or modification, distribution and/or removal from the Shared Shelf Software of Your and/or Shared Content, and/or any portion thereof. For example, you agree that ARTstor shall not be liable and shall be held harmless for any errors or omissions in Your Content and/or Shared Content, or for any loss, claim, damage, or liability should Your Content and/or Shared Content violate or infringe any third party rights (including without limitation any patent, trademark, trade secret, copyright, contractual, or other proprietary rights) or any international, federal, state, or local law, statute, or regulation. You further agree to hold ARTstor harmless in the event that ARTstor acts pursuant to its DMCA obligations, including without limitation terminating your access to Your Content and/or to Shared Content, and/or your access to Shared Shelf.

Should you believe that any content on Shared Shelf violates your copyright in such content, please send a written notice to ARTstor, directed to the Office of the General Counsel, at the address posted on the ARTstor website at www.artstor.org. Such notices must comply with the DMCA. For more information about what should be included in such notices, please see the copyright statement on ARTstor's website at www.artstor.org.

8. **Proprietary Rights**.

- a. **Trademarks and Related Intellectual Property**. Your use of Shared Shelf implies no right of any kind in any trademarks, logos, names, designs, and/or other intellectual property held by ARTstor in Shared Shelf and all related products and services. You may not use ARTstor's intellectual property without the advance, written permission of ARTstor (or as expressly set forth herein), and you represent that you shall not take any action that would impede, limit or alter ARTstor's rights in such intellectual property.
- b. **Shared Shelf Software**. Except to the extent that ARTstor expressly shares components of Shared Shelf Software on an open source basis by posting them on the ARTstor website subject to open source licenses, all Shared Shelf Software and related documentation is proprietary to ARTstor and/or third parties with whom ARTstor has entered into licenses, and nothing herein is intended to transfer or otherwise provide you with any ownership rights to such Shared Shelf Software, or other rights of any kind except for the limited license set forth herein. You may not copy, distribute, modify, decompile, reverse engineer, circumvent, override or disable encryptions or other protections in, or create derivative works from, the Shared Shelf Software, and you represent that you shall not take any action that would impede, limit or alter ARTstor's or any third party's ownership rights in the Shared Shelf Software.

9. **Privacy Policy**. Your use of Shared Shelf indicates your acceptance of the ARTstor Privacy Policy, a copy of which may be found at www.artstor.org, as it may be amended from time to time.

10. **Disclaimer**. **EXCEPT AS EXPRESSLY SET FORTH IN WRITING HEREIN, SHARED SHELF IS BEING PROVIDED ON AN "AS IS" BASIS AND ARTSTOR EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY, AND ANY AND ALL WARRANTIES, CONDITIONS, GUARANTEES AND/OR REPRESENTATIONS OF ANY KIND (WHETHER EXPRESS OR IMPLIED) IN CONNECTION WITH SHARED SHELF AND THE SHARED SHELF SOFTWARE, YOUR CONTENT, SHARED CONTENT AND/OR SHARED FORUMS, AND/OR ANY COMPONENTS OR PORTIONS THEREOF, INCLUDING WITHOUT LIMITATION ANY AND ALL WARRANTIES OF FITNESS, MERCHANTABILITY, QUALITY, PERFORMANCE, ACCURACY, COMPATIBILITY, INFRINGEMENT, AND/OR SECURITY. Some jurisdictions do not allow the exclusion of certain warranties or limitations of liability, in which case the above limitations and exclusions apply to the fullest extent permitted by law.**

11. **Limitation of Liability**. In no event shall ARTstor be liable for any incidental, indirect, special, punitive or consequential damages, notwithstanding the failure or essential purpose of any limited remedy.

12. **Defense of Claims; Indemnity**. In the event that any claim or threatened claim is asserted against you in connection with your use of Shared Shelf, you agree to immediately notify ARTstor and to reasonably cooperate in the defense of such a claim or threatened claim as required by ARTstor. ARTstor reserves the right (but not the obligation), at its own expense, to assume the exclusive defense and control of any such matter, and such defense shall be subject to indemnification by you if it is the result of: (i) your violation of these Terms and Conditions of Use; (ii) your violation of any third party right, including without limitation any copyright, property or privacy right; and/or (iii) any claim that Your Content caused damage to or otherwise injured a third party. This indemnification obligation

shall survive the termination or expiration of these Terms and Conditions of Use and your use of Shared Shelf.

13. **General.**

- a. **Choice of Law; Venue.** These Terms and Conditions of Use shall be interpreted and construed according to, and governed by, the federal and state laws of the United States of America, as applicable, excluding any such laws that might direct the application of the laws of another jurisdiction, and venue shall lie exclusively in the federal and state courts of the United States of America, excluding any such laws to the contrary. You consent to the personal jurisdiction of such courts over you, and waive and agree not to assert any objection to proceedings in such courts. You agree to waive all rights of application or appeal, if any, to non-U.S. courts in connection with any question of law arising in the course of any dispute herein, or with respect to any award made.
- b. **Illegality; Unenforceability; Conflict of Law.** If any provision or provisions of this Agreement shall be 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 be in any way affected or impaired thereby. A waiver of any breach of this Agreement shall not be deemed a waiver of other breaches of the Agreement.
- c. **Entire Agreement.** These Terms and Conditions of Use set forth the entire Agreement between us.
- d. **No Agency.** No agency, partnership, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by this Agreement.

14. **Terms and Conditions Subject to Change.** ARTstor may change these Terms and Conditions of Use at any time, and such modified Terms and Conditions of Use shall be posted on the ARTstor website, as well as in the Shared Shelf interface. Your use of Shared Shelf constitutes your agreement to the modified Terms and Conditions of Use and all changes thereto.

Last updated September 29, 2010.

©2010 ARTstor Inc. All rights reserved.