

## **ARTSTOR DIGITAL LIBRARY TRIAL LICENSE AGREEMENT (Public Library - International)**

This license agreement (“Agreement”) sets forth the terms and conditions under which ARTstor is providing \_\_\_\_\_ (“Licensee”) with access to the ARTstor Digital Library on a trial basis for the term set forth in Attachment A hereto (the “Term” or “Trial Period”). Licensors and Licensee (the “Parties”) hereby agree as follows:

- 1. Grant of License:** For the duration of the Trial Period, ARTstor grants Licensee and its Authorized Users a non-exclusive, non-transferable, limited, free-of-charge license to use the ARTstor Digital Library for only those uses permitted under the ARTstor Terms and Conditions of Use posted in the ARTstor Digital Library and on the ARTstor website at [www.artstor.org](http://www.artstor.org) (the “ARTstor Terms of Use”). The ARTstor Terms of Use are incorporated herein by reference.
- 2. Authorized Users.** The following categories of individuals qualify as “Authorized Users” under this Agreement: (a) individuals officially affiliated with Licensee (such as staff, volunteer staff, members and card holders, and affiliated researchers); and (b) other individuals physically present in the facilities of Licensee (“Walk-In Users”). It is understood by the Parties that Licensee’s Authorized Users may only access the ARTstor Digital Library while on Licensee’s physical premises, and are not permitted to access the ARTstor Digital Library remotely. Individuals who do not have an official or unofficial affiliation with Licensee (such as persons whose only association to Licensee is that they pay fees to use the physical facilities or services), may only access the ARTstor Digital Library as Walk-In Users. Authorized Users shall be subject to the ARTstor Terms of Use, and Licensee shall take all reasonable steps to ensure that the ARTstor Digital Library is accessed, displayed, and used in accordance with this Agreement and the ARTstor Terms of Use. **If Authorized Users are individuals under 21 years of age (“Minors”), Licensee shall be solely responsible for determining which of those Minors shall have access to ARTstor Digital Library and the content that Minors shall have access to within the ARTstor Digital Library.**
- 3. Fees; Access to Internet.** ARTstor shall not charge Licensee for accessing and using the ARTstor Digital Library during the Trial Period. However, Licensee shall be solely responsible for paying all costs, fees and taxes associated with establishing access to and using the ARTstor Digital Library (such as costs for Internet access), as well as with establishing Licensee’s access to the Internet.
- 4. Local Content; Shared Content and Shared Forums.** Licensee and/or its Authorized Users may use certain features within the ARTstor Digital Library to upload, share or access content other than that content being provided by ARTstor (such non-ARTstor Content is referred to as “Local Content”). The features ARTstor provides to access such Local Content are referred to as “Local Content Services.” ARTstor may also make available through the ARTstor Digital Library certain Shared Forums, such as blogs, wikis or other shared spaces that are accessible to all ARTstor Digital Library participants or that are openly accessible without access limitations via the Internet, to facilitate information exchange. Licensee represents and warrants that it will not directly or indirectly access or use the Local Content Services or Shared Forums to: (a) violate any third party right(s), law(s) or regulation(s); (b) interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment (e.g, through the introduction of a virus); (c) circumvent, disable, or override any encryption features or other protections in the ARTstor Digital Library software; and/or (d) intentionally interfere with or disrupt the Local Content Services.
- 5. Making the ARTstor Digital Library or ARTstor Content Available to Audiences of Different Age Groups.** ARTstor seeks to serve a wide range of audiences, including audiences of different age groups, in the scholarly and educational communities. ARTstor makes no representations or warranties of any kind, and shall not be held liable in any way, for any ARTstor Content, Local Content and/or Shared Content that might be deemed offensive, inflammatory, obscene, defamatory, or otherwise unsuitable for some users. Notwithstanding anything to the contrary herein, Licensee takes sole responsibility for determining whether ARTstor Content, Local Content and/or Shared Content is

appropriate for viewing by such individuals and for complying with any applicable federal, state and local laws, including but not limited to (a) any laws regulating the provision of ARTstor Content, Local Content and/or Shared Content to audiences of different age groups; and (b) any laws regulating children's use of the Internet. Licensee agrees to take reasonable steps to inform its Authorized Users of these disclaimers when they are accessing the ARTstor Digital Library.

Licensee understands that, in compliance with the Children's Online Privacy Protection Act and pursuant to the K-12 Terms of Use, Authorized Users under the age of 13 are instructed to seek permission from a teacher or librarian prior to supplying an email address to register on ARTstor's web site. Licensee agrees that it is solely responsible for ensuring that none of the email addresses supplied by Authorized Users under the age of 13 during such registration process on the ARTstor web site contain personally identifiable information, such as first and last names. If ARTstor learns that an Authorized User under the age of 13 has provided an email address containing personal information, ARTstor may immediately disable the Authorized User's registered account.

**6. Proprietary Rights.** Licensee hereby recognizes and agrees that the ARTstor Digital Library, some ARTstor Content, the ARTstor marks and logos (and all ARTstor-affiliated marks and logos) and the software used by Licensee and its Authorized Users to access the ARTstor Digital Library ("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. No rights (other than the limited license granted in Paragraph 1) are transferred to Licensee or its Authorized Users under this Agreement, including, without limitation, the right to modify, manipulate or create derivative works of the ARTstor Digital Library.

**7. Links to ARTstor Digital Library.** Licensee may provide electronic links to the ARTstor Digital Library from Licensee's web page(s), provided that such electronic links do not provide access to the ARTstor Digital Library in violation of the ARTstor Terms of Use or this Agreement. Licensee shall not modify, manipulate, or create a derivative work of the ARTstor Digital Library other than in creating such links during the Term.

**8. Delivery and Support.**

8.1 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), or via other means, such as through automated authentication systems where applicable. To perform some 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 or similar information.

8.2 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 to the ARTstor Digital Library without advance notice to an unauthorized and/or open proxy server.

**9. Security and Usage Data.**

9.1 Protection of the ARTstor Digital Library and ARTstor Content. Licensee shall use all reasonable efforts to protect the ARTstor Digital Library from any use that is not permitted under, or is in violation of, this Agreement and/or the ARTstor Terms of Use. ARTstor may terminate this Agreement immediately upon notice to Licensee if, in ARTstor's reasonable opinion, Licensee or its Authorized Users have committed material violations of this Agreement or the ARTstor Terms of Use.

9.2 Use of Access Software. 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, translate, convert to another programming language, decompile, or reverse engineer the Access Software or any components thereof for any purpose.

9.3 Additional Measures in the Event of a Violation or Suspected Violation. Licensee agrees to notify ARTstor promptly upon learning of any actual or suspected violation of this Agreement or the ARTstor Terms of Use by Licensee or Authorized Users, and to take all reasonable steps to cease and prevent such violations.

9.4 Monitoring and Gathering Usage Data. ARTstor may monitor and collect information on the use of the ARTstor Digital Library consistent with ARTstor's Privacy Policy, posted on the ARTstor website at [www.artstor.org](http://www.artstor.org), as it may be amended from time.

**10. Termination.** 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 ARTstor shall remove any Local Content of Licensee and its Authorized Users from ARTstor's servers). Upon termination, Licensee shall immediately remove and destroy all ARTstor Content from Licensee's servers (or servers operated on Licensee's behalf), and shall take reasonable steps (such as posting a notice in a location determined by Licensee) to notify Licensee's Authorized Users that Licensee is no longer providing access to the ARTstor Digital Library, and that Authorized Users may no longer access ARTstor Content. The provisions of Sections 6, 9.3, and 10 through 12 of this Agreement, and the ARTstor Terms of Use, shall survive any termination or expiration of this Agreement, and continue in effect.

## **11 Representations, Warranties, and Disclaimers.**

11.1 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.

11.2 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 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.

11.3 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 in accordance with the ARTstor Privacy Policy.

11.4 Disclaimer of Liability by ARTstor; Licensee Liability for Shared Content, Shared Forums and Local Content. ARTstor shall in no way be liable, and Licensee agrees that it shall not hold ARTstor liable, in connection with any and all violations and/or breaches of this Agreement by Licensee, its agents, employees, officers, directors, and/or breaches of the ARTstor Terms 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 ARTstor Terms of Use.

Licensee acknowledges and agrees that ARTstor does not screen, select or edit any Local Content and/or any materials shared through Shared Forums (“Shared Content”), and is acting only as an online service provider in making available the Local Content Services and Shared Forums. Licensee agrees to hold ARTstor harmless in connection with any claim, threatened or asserted claim, damage, loss or liability of any kind in connection with Local Content and/or Shared Content.

**EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE ARTSTOR DIGITAL LIBRARY AND ALL RELATED SERVICES AND SOFTWARE ARE BEING PROVIDED ON AN “AS IS” BASIS AND ARTSTOR AND ANY AND ALL THIRD PARTY CONTENT AND SOFTWARE PROVIDERS AND/OR LICENSORS DISCLAIM TO THE FULLEST EXTENT OF THE LAW ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS OF ANY KIND RELATING TO THE ARTSTOR DIGITAL LIBRARY, ARTSTOR CONTENT, THE ACCESS SOFTWARE, SHARED CONTENT AND SHARED FORUMS, OR ANY PARTS THEREOF.**

## 12. Miscellaneous.

12.1 Entirety of the Agreement. The terms and conditions of this Agreement and the ARTstor Terms of Use shall constitute the entire agreement between the Parties and shall supersede all written and oral agreements with respect to the subject matter 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.

12.2 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.

12.3 Use Outside of United States. 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.

12.4 English Language. All notices given pursuant to this Agreement shall be in writing and in English. The English language version of this Agreement shall be controlling over any other version.

12.5 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.

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

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

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 Trial License Agreement, and incorporates by reference all of the terms of the ARTstor Digital Library Trial License Agreement between ARTstor and the Licensee listed below.

*(Please type or print clearly)*

**Licensee (Institution Name):** \_\_\_\_\_  
**Licensee Address:** \_\_\_\_\_  
\_\_\_\_\_

**Term of Agreement and Renewal Terms:** Trial License Agreement: This Agreement will expire thirty (30) calendar days after this Agreement has been executed by the Parties and after access to the ARTstor Digital Library has been established at the IP addresses set forth below or by Password Account (as defined below). No renewals of trial license agreements are permitted.

**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:** \_\_\_\_\_

**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

**Trial Start Request Date** (date on which Licensee requests access to ARTstor begins) *(To be completed by Licensee):*

\_\_\_\_\_

**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: \_\_\_\_\_

Should Licensee not utilize a static IP address, ARTstor may, in its discretion, create a password account unique to Licensee in order to facilitate Trial Access under this Agreement (a "Password Account").

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:** No payment required for trial access to ARTstor.

**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 5 by someone who is authorized to legally bind the institution to the terms and conditions of use outlined in the Agreement.

**What is the Date on page 5 below the signature line?**

The date on the signature page is the date Licensee signs the Agreement and agrees to the terms of the license. There is a separate line on page 7 for you to request a trial start date and for ARTstor to indicate the actual start date. The 30-day trial term will commence on the date ARTstor provides your institution with access to the Digital Library.

**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 negotiate agreements on behalf of the institution, or someone who can answer legal questions for the institution.

**How does ARTstor authenticate users?**

In 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. In 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 6. 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 at fully participating institutions to continue to access ARTstor remotely for a temporary period of time. Please feel free to contact ARTstor if you have questions about this option.

**How do I request a trial start date?**

You can request a trial start date by filling in the Trial Start Request Date on page 7. Requests need to be submitted at least one week before the date you want the trial to begin. We will try to accommodate your date request, but there is no guarantee that we can honor a specific date request. When we receive your trial Agreement and date request you will be contacted by Library Relations to confirm a date for trial access to begin.

**Where do I send the Agreement?**

ARTstor will need two completed Trial 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, 5, 6, and 7 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)