

**ARTSTOR® METASEARCH
LICENSE AGREEMENT**

Licensee Name: _____

Agreement Date: _____

Licensee Product(s) or Resource(s) linked from: _____

Licensee Notice Address:

Attn: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

ARTstor Notice Address:

Attn: Gretchen Wagner, General Counsel and Secretary

ARTstor Inc.

151 East 61st Street

New York, New York 10021

Telephone: (212) 500-2400

Facsimile: (212) 500-2424

E-Mail: gaw@artstor.org

Licensee Primary Contact:

(if different from Notice Contact)

Attn: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Licensee Technical Contact:

(responsible for implementing and maintaining links)

Attn: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Other Licensee Information

(Please notify us of updates)

Licensee's URL/Domain Name: _____

Licensee's IP Address(es): _____

User Name if Access to Metasearch Engine is Restricted: _____

User Password if Access to Metasearch Engine is Restricted: _____

The parties agree to be bound by the terms and conditions of the ARTstor Metasearch License Agreement attached hereto, in witness whereof the parties have set their hands as of the Agreement date above.

LICENSEE

ARTstor Inc.

BY: _____

BY: _____

NAME: _____

NAME: Gretchen Wagner

TITLE: _____

TITLE: General Counsel and Secretary

ARTSTOR® METASEARCH LICENSE AGREEMENT

THIS METASEARCH LICENSE AGREEMENT (this “Agreement”) is entered into by and between ARTstor Inc., a not-for-profit corporation formed under the laws of the State of Delaware (“ARTstor”), and Licensee specified above as of the Contract Date specified above (the “Effective Date”).

WHEREAS, there exists a need in the United States and throughout the world to make digital images of art works and related cataloging more accessible to teachers, scholars, curators, researchers, and students; and

WHEREAS, ARTstor operates and makes available an access-restricted electronic database via the World Wide Web of digital images of art works, texts, related cataloging and other educational materials solely for noncommercial educational, cultural, and scholarly purposes; and

WHEREAS, Licensee is in the business of providing a search tool that facilitates access to electronic scholarly and educational resources via the World Wide Web and wishes to make ARTstor Content available through the ARTstor Digital Library (as hereinafter defined) more accessible; and

WHEREAS, ARTstor and Licensee wish to make links available to facilitate an alternative access path for persons who have access rights to both the ARTstor Content available through the ARTstor Digital Library and the Metasearch Engine (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.0 DEFINITIONS

1.1 The “ARTstor Digital Library” means, for purposes of this Agreement, an electronic database of digital images of art works and other objects, cataloging and texts, a user interface, and an electronic search capacity and other software tools, which is accessed by Mutually Authorized Users (as hereinafter defined) and, at ARTstor’s sole discretion, others, via ARTstor’s Web-based interface.

1.2 “ARTstor Content” means all content in the ARTstor Digital Library, including without limitation all digital images of art works and other objects, as well as associated cataloging and texts.

1.3 “Metasearch Engine” means the user interfaces, software, and content in Licensee’s own software product, and accessed by Mutually Authorized Users at the URL(s) identified on page one of this Agreement. Metasearch Engine shall include only the Licensee product(s) or resource(s) identified on page one of this Agreement.

1.4 “Mutually Authorized Users” means persons who are permitted by ARTstor to access ARTstor Content in the ARTstor Digital Library and, concurrently, are permitted by Licensee to access Metasearch Engine.

1.5 “ARTstor Terms and Conditions of Use” means those terms and conditions for use of the ARTstor Digital Library that appear on certain screen displays in the ARTstor Digital Library as such may be amended from time to time. The ARTstor Terms and Conditions of Use shall include the right to access, use, reproduce, publicly display and perform, and distribute ARTstor Content as permitted under the ARTstor Terms and Conditions of Use and solely for noncommercial educational, cultural, and scholarly uses.

2. GRANT OF LICENSE

2.1 ARTstor hereby grants Licensee for the term of this Agreement a limited, non-exclusive, worldwide, royalty-free license to direct the Metasearch Engine to the ARTstor Digital Library’s automated interface for the purpose of submitting search queries to the ARTstor Digital Library and receiving back result sets formatted in eXtensible Markup Language (“XML”).

2.2 ARTstor may, at its discretion, provide Licensee with Internet Protocol (“IP”)-based access to the ARTstor Digital Library (“Access”) for a limited time solely for the purpose of enabling Licensee to test the

Metasearch Engine with respect to its use of ARTstor in accordance with the terms of this Agreement. Any other usage of this Access shall be prohibited, and ARTstor reserves the right to terminate some or all of the Access immediately and at its discretion. Should ARTstor grant Licensee access to the ARTstor Digital Library for these purposes, Licensee shall only access and use the ARTstor Digital Library and ARTstor Content for these limited testing purposes, and shall in no event share or make available the ARTstor Content or ARTstor Digital Library to third parties during such testing period.

3. DELIVERY; ACCESS; SUPPORT

3.1 ARTstor shall supply Licensee with access to an XML gateway to enable the delivery of search results from ARTstor to Licensee solely for purposes of displaying such search results in the Metasearch Engine Interface. The transfer of search results shall occur solely through this gateway, and no other methods of data transfer shall be permitted. Search requests to the ARTstor Digital Library via the XML gateway must contain within them a User-agent string that complies with the syntax outlined in Exhibit A.

3.2 To ensure system functionality and quality control, Licensee agrees to test the Metasearch Engine to ARTstor's satisfaction. Such testing shall include, but not be limited to, ensuring the Metasearch Engine: (i) delivers results that are identical to search results produced by ARTstor's native interface; (ii) delivers results no more than two (2) seconds after results are delivered by the native ARTstor interface; (iii) configures and/or filters its searches in a way that maps to ARTstor's collections-based search engine; and (v) describes ARTstor's collections in ways that are approved in advance by ARTstor. Licensee shall display search results in a format determined solely by ARTstor, which format will include the image size (if any) displayed as part of such search results.

3.3 Access from the data generated by the Metasearch Engine to ARTstor Content in the ARTstor Digital Library shall remain entirely controlled by ARTstor's authentication mechanisms, and ARTstor shall remain solely responsible for participation in the ARTstor Digital Library. ARTstor shall permit only users authorized by ARTstor to use the ARTstor Digital Library to have access to the ARTstor Digital Library in connection with the services described herein. Licensee is solely responsible for Mutually Authorized Users' purchasing or making other arrangements for access to the Metasearch Engine. It is understood that all Mutually Authorized Users using the ARTstor Digital Library are required to comply with the ARTstor Terms and Conditions of Use. Each party agrees to refer to the other party requests for access to the other party's database.

4. INTELLECTUAL PROPERTY OWNERSHIP

4.1 Subject to the intellectual property rights of third parties (such as licensors of ARTstor Content and software programs used in the development of the databases), ARTstor shall retain all rights to the ARTstor Digital Library and ARTstor Content, and Licensee shall own the content and software developed for its search engine. Except as expressly granted herein, under no circumstances shall anything in this Agreement be construed as granting, by implication, estoppel, or otherwise, to one party a right or license to the other party's name, logo, design marks, trade names, or service marks (collectively, the "Trademarks"), issued patents and patent applications, copyrights and copyright registrations and applications, rights in ideas, designs, works of authorship, derivative works, or any other rights or license relating to the other party's intellectual property or services. If one party acquires goodwill or reputation in any of the intellectual property of the other party, such goodwill or reputation will automatically vest in the other party when and as such goodwill or reputation occurs. Both parties agree to take all actions necessary to effect such vesting. In no event shall either party use in any way (including display, make performances with, reproduce, distribute, or adapt) the other party's intellectual property without the advance, written consent of the owning party.

4.2 Each party reserves the right to make changes to the style, content, format, and structure of its respective database. The foregoing shall not prevent ARTstor and Licensee from addressing issues of quality control in accordance with Section 3.2 herein regarding data provided by the other party. Each party agrees to notify the other of any material changes to the style, content, or structure of its respective database.

5. LIMITED TRADEMARK LICENSE

5.1 ARTstor and Licensee hereby grant one another a limited, nonexclusive, royalty-free, worldwide license to use and incorporate their respective Trademarks solely for the purpose of facilitating the sending of search queries and the delivery of search result sets between one another's databases (or software product) in accordance with the terms and conditions herein. Both parties reserve the right to control the use of their respective Trademarks.

5.2 Licensee and ARTstor agree to adhere to standards consistent with the high level of quality associated with one another's Trademarks. Neither party shall use any Trademarks or other database content to make it appear that the other party is endorsing, sponsoring, or recommending the information, goods, or services in its web site. Neither party shall suggest the other party is affiliated with it, its advertisers, or other entities to which it is linked, and neither party will otherwise misrepresent its relationship with the other party or present false or misleading information about the other party's products or services. Neither party shall use the Trademarks, or other materials, in a manner that is likely to cause confusion with, dilute, or damage the reputation of the other party or its database. Neither party shall place the other party's web pages in a "frame" within that party's web site, use other techniques that alter or obstruct the visual or other presentation of the other party's database in whole or in part, or otherwise impose editorial comment or commercial material or any other type of identification on or in proximity to content displayed in the other party's database without written permission from an authorized representative of the other party. Neither party shall use the name or logo of the other party, its participants, or content in any "metatag" without the other party's express written permission.

5.3 In a manner approved in advance in writing by ARTstor, Licensee may use the plain text name and logo of ARTstor in identifying resources available for searching and when search results are provided by the Metasearch Engine; however, unless ARTstor expressly agrees in advance in writing, Licensee may not otherwise use the name or logo of ARTstor, its participants, or content in connection with the Metasearch Engine. Licensee shall not use the names or logos of ARTstor, its participants, or content in any advertising or promotion without express written permission from ARTstor. Each party shall provide the other with samples of any literature produced containing the other party's Trademarks and will notify the other party of the URL of literature or web pages it creates containing Trademarks of the other party or links to the other's web site, and of substantive changes made to any such web pages. In connection with the foregoing, each party agrees to cooperate in making changes to such literature or web pages as reasonably requested by the other party.

6. REPRESENTATIONS AND WARRANTIES

6.1 Licensee represents and warrants that its Metasearch Engine attempting to deliver search result sets from the ARTstor Digital Library is operating twenty-four (24) hours a day every day of the year and is secure.

6.2 Each party hereby represents and warrants that it is duly organized and validly subsisting and has full authority to enter into this Agreement and to bind the 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.

6.3 **OTHER THAN THE EXPRESS WARRANTIES STATED IN THIS SECTION 6, THE ARTSTOR DIGITAL LIBRARY AND METASEARCH ENGINE ARE PROVIDED ON AN "AS IS" BASIS, AND ARTSTOR AND LICENSEE DISCLAIM ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS, IMPLIED, ORAL OR WRITTEN), RELATING TO THE ARTSTOR DIGITAL LIBRARY OR METASEARCH ENGINE OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Neither party makes any warranties respecting improper usage of its respective database by users or any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. Both parties further expressly disclaim any warranty or representation to Mutually Authorized Users, or to any third party.

6.4 Neither party shall be liable for any loss, injury, claim, liability or damage of any kind resulting from the unavailability of the other party's database, interruption of the services provided hereunder, or arising out of or in connection with the other party's linking activities. If either party's database fails to operate, that party shall promptly notify the other party, and the other party's sole obligation shall be to repair

the nonconformity. Neither party shall be liable for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, even if advised of the possibility of a claim. Neither party shall have any responsibility or liability for any content appearing in the other party's database or for any link to or from third party web sites.

7. TERM AND TERMINATION

7.1 This Agreement shall continue in effect for one (1) year from the first day of the calendar year that follows the Effective Date, and will renew for successive one (1) year terms unless earlier terminated by either party by written notice not less than ninety (90) days prior to the end of the then-current term. Additionally, ARTstor may choose not to renew and may terminate this Agreement at the end of a one-year term if it determines that there are not a sufficient number of users accessing the ARTstor Digital Library through Licensee's Metasearch Engine to continue such Agreement, or if it determines that the costs of migrating technology are too costly to maintain this Agreement.

7.2 In the event that either party believes that the other materially has breached any obligations under this Agreement, or if either party believes that the other has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have sixty (60) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the sixty (60) day period, the non-breaching party shall have the right to terminate the Agreement without further notice. Either party may terminate this Agreement by notice to the other if the other becomes insolvent or makes an assignment for the benefit of creditors, or a receiver or similar officer is appointed to take charge of all or part of its assets. In addition, ARTstor may terminate this Agreement on thirty (30) days notice if the quality and/or testing of Licensee's Metasearch Engine is not, in ARTstor's reasonable opinion, satisfactory and on sixty (60) days' written notice if, in ARTstor's reasonable opinion, the cumulative effect of violations of ARTstor Terms and Conditions of Use by Mutually Authorized Users or violations of this Agreement by Licensee justifies such termination.

7.3 Upon termination or expiration of this Agreement, all rights granted hereunder shall be terminated, except as otherwise noted, and Licensee shall, within thirty (30) days of termination, remove or deactivate all links to ARTstor, shall remove all search results from the Metasearch Engine that lead directly to ARTstor content, cease using ARTstor's Trademarks in association with Licensee's product(s), and forthwith provide a written statement that the aforementioned deactivation has taken place.

8. GOVERNING LAW

8.1 This Agreement shall be interpreted and construed according to, and governed by, the laws of the State of New York or United States Federal law, 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.

8.2 Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled by arbitration by an arbitrator with specific expertise in Internet and electronic commerce matters in New York, New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

9. NOTICES

All notices given pursuant to this Agreement shall be in writing and sent to the Notice Address specified on page one hereof. Notices may be delivered by hand, by overnight carrier, or shall be deemed to be received within five (5) business days after mailing if sent by registered or certified mail, postage prepaid. If any notice is sent by facsimile, then confirmation copies must be sent as specified above. Either party may from time to time change its Notice Address by written notice to the other party.

10. CONFIDENTIALITY

ARTstor and Licensee shall not, during the term of this Agreement or any time thereafter, disclose, or permit any of their employees, agents, or assignees to disclose, to any other person or entity any Confidential Information (as defined below) of the other party. "Confidential Information" shall mean all data, reports,

instructions, directions, interpretations, specifications, forecasts, and records containing or otherwise reflecting information concerning the parties, their affiliates, and subsidiaries that is not available to the general public and is provided by one party to the other in the course of their dealings, together with all analyses, compilations, studies, or other documents or materials, whether prepared by one of the parties or by others, that contain or otherwise reflect such information, and whether marked confidential or not. Confidential Information does not include information which (a) was or becomes generally available to the public other than as a result of a disclosure by the receiving party or its representatives or (b) was or becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party or its advisers, provided that such source was not known by the receiving party to be bound by any agreement to keep such information confidential, or otherwise prohibited from transmitting the information to the receiving party by a contractual, legal or fiduciary obligation.

11. MISCELLANEOUS

11.1 This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of ARTstor and Licensee.

11.2 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 together shall constitute one agreement.

11.3 Nothing contained herein shall be deemed to create an agency, joint venture, or partnership relationship between the parties. Neither party shall use or attempt to exercise apparent authority concerning the other party in its dealings with third parties.

11.4 Nothing in this Agreement shall be construed as providing for compensation to either party for its services under this Agreement, and each party shall bear the costs of performing its obligations hereunder.

11.5 Neither party shall be liable in damages or have the right to cancel this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, strikes, fires, floods, work stoppages, unavailability of materials, carriers or communications facilities, and/or any other cause beyond the reasonable control of the party whose performance is affected.

11.6 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.

11.7 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 in any way be affected or impaired thereby.

11.8 Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, except however that ARTstor may make such assignment to one or more of its affiliated entities.

EXHIBIT A

In accordance with Section 3.1 of the Agreement, search requests to the ARTstor Digital Library must contain within them a User-agent string taking the form outlined below. ARTstor reserves the right to eliminate or modify the following options at its sole discretion upon reasonable advance notice to Metasearch Engine.

MOZVER (compatible; VENDOR; PRODUCT; OS; OPTIONAL)

Where:

MOZVER is mozilla equivalent version like "Mozilla/4.0"

VENDOR is the metasearch vendor name

PRODUCT is product name and version

OS is Operating System version

OPTIONAL is for any additional modules or customizations or comments

For example:

Mozilla/4.0 (compatible; Vendor; Productname 1.2.333; Windows NT 5.0)

Or, optionally:

Mozilla/4.0 (compatible; Vendor; Productname 1.2.333; Windows NT 5.0; Customization 2.5).