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- 12.3 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.
- 12.4 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) any and all uses, reproductions, displays, performances, or distributions made of the ARTstor Digital Library and/or ARTstor Content outside of the United States of America; (e) 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 the fair use or other provisions of US or other countries' laws; and/or (f) 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; and (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. 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.

- 12.5 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, 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; USES, DISPLAYS, PERFORMANCES, REPRODUCTIONS, AND DISTRIBUTIONS MADE OUTSIDE OF THE UNITED STATES; 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 LAW OR OTHERWISE) AND/OR ANY USE(S), REPRODUCTIONS, DISPLAYS, PERFORMANCES, AND DISTRIBUTIONS MADE OF ARTSTOR CONTENT AFTER THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**
- 12.6 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 12.4, 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 12.4, in no event shall ARTstor's liability exceed the fees paid to ARTstor by Licensee. In the event, due to causes within its reasonable control, ARTstor is unable to provide Licensee with access to the ARTstor Digital Library for an aggregate period of fourteen (14) consecutive days during any twelve (12) month period, Licensee may terminate the Agreement and receive a pro rata refund of the Annual Access Fee only for the remaining portion of that year.
- 12.7 Laws and Jurisdiction of the United States of America Controlling. This Agreement shall be interpreted and construed according to, and governed by, the federal and state laws of the United States of America, 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.

- 12.8 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. If financially feasible for ARTstor, ARTstor would provide Licensee with a pro rata refund of the Annual Access Fee paid by Licensee for the then-current term in the event that ARTstor ceases to exist and the transfer contemplated in this section does not occur.

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 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. 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.
- 13.3 No Agency, Joint Venture or Partnership. Nothing contained herein shall be deemed to create an agency, joint venture, or partnership relationship between the Parties.
- 13.4 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.
- 13.5 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.
- 13.6 Use Outside of the United States of America. Should Licensee and/or its Authorized Users access the ARTstor Digital Library outside of the United States of America, such access 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 agrees to comply with all applicable laws and regulations in its exercise of the License. Licensee agrees that, should it use the

ARTstor Digital Library License Agreement

ARTstor Library outside of the United States of America, it will effect or obtain any necessary governmental or regulatory filings and approvals required outside of the United States of America in connection with its use of the ARTstor Digital Library in such countries and will pay any costs associated therewith. Should Licensee access the ARTstor Digital Library from a country outside of the United States of America, Licensee will inform ARTstor of any laws in such country of which Licensee becomes aware that require any change to this Agreement. ARTstor may revoke access to the ARTstor Digital Library in any country outside the United States of America if warranted, in ARTstor's sole opinion, by the laws or regulations of such country.

13.7 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 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 Initial three-year term, automatically renewable upon payment for additional one-year
Renewal Terms: 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: _____

ARTstor Primary Contact:

User Services
ARTstor Inc.
151 East 61st 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 61st Street
New York, NY 10065
Telephone: 212-500-2400;
Facsimile: 212-500-2424
Email: gaw@artstor.org

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 for details)?

Yes No

Payment Terms:

Full Time Equivalent (FTE) Enrollment (*undergraduate plus graduate*): _____

ARTstor Classification: (*to be completed by ARTstor*) _____

Archive Capital Fee (ACF): (*to be completed by ARTstor*) _____

Annual Access Fee (AAF): (*to be completed by ARTstor*) _____

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 thirty (30) 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.

Any payments made more than thirty (30) 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.

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

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 61st 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