

HOSTING SERVICES: PHASE TWO RIDER TO THE ARTSTOR DIGITAL LIBRARY LICENSE AGREEMENT

This rider ("Rider") is an addendum to the ARTstor Digital Library License Agreement ("ARTstor License Agreement") entered into between the Regents of the University of California, a non-profit academic institution, with its principal offices at The California Digital Library, University of California Office of the President, 415 20th Street, 4th Floor, Oakland, CA 94612, USA ("Your Institution") and ARTstor, and unless expressly specified to the contrary herein, incorporates by reference all of the terms of the ARTstor License Agreement. This Rider is effective as of the last date of signature below ("Hosting Agreement Date").

The Rider is effective for Phase Two of the Hosting Services. During Phase Two, ARTstor will be expanding the hosting services it currently provides to additional institutions, and building tools and services with the aim of providing a better user experience as well as reducing ARTstor's costs in providing the service.

I. Description of Services.

- A. ***Local Content and Local Content Services.*** ARTstor provides a hosting service and other tools ("Hosting Service") through which Your Institution, and individual users at Your Institution, may access and make certain uses of Local Content, along with ARTstor Content (these are referred to in section 3.6 of the ARTstor License Agreement as "Local Content Services"). "Local Content" means images, texts, and other materials that are selected and obtained by Your Institution or by Authorized Users at Your Institution from source(s) other than the ARTstor Digital Library and that are accessed and used (including displayed, reproduced, or distributed) through the ARTstor Access Software.

Local Content is different from ARTstor Content as ARTstor does not select, obtain, or screen the Local Content. Instead, Your Institution or individual Authorized Users at Your Institution are solely responsible for selecting, obtaining, and screening such Local Content (and, should Your Institution share that Local Content with other institutions, for determining that such Local Content can be legally shared).

- B. ***Hosted Collections and Personal Collections.*** ARTstor has created two different ways in which Local Content can be accessed by Your Institution, by individuals at Your Institution, and by others designated by Your Institution. First, there is the Hosting Service, which is the subject of this Rider, through which Your Institution can create collections of Local Content, chosen, obtained and screened by Your Institution. This type of Local Content is called "Hosted Collections." Through ARTstor's Hosting Service, Your Institution can direct ARTstor to place these Hosted Collections on ARTstor's servers. Your Institution will then determine who has access to these Hosted Collections, and ARTstor will make such Hosted Collections available to those persons or institutions as directed by Your Institution (provided such persons or institutions already license the ARTstor Digital Library).

Additionally, an individual Authorized User at Your Institution can create a personal collection, which contains Local Content, and which can be viewed by that individual and/or by other Authorized Users at Your Institution ("Personal Collection"). The Authorized User uses the Personal Collection tools to electronically upload that Personal Collection onto ARTstor's servers, so that he or she (and others within that user's

institution, if that user so designates) may access and use that Personal Collection with the ARTstor Access Software. Once Your Institution has signed a Hosting Rider, an administrator or other authorized representative of Your Institution can choose to incorporate individual Personal Collections (or a part of them) at your institution into Your Institution's Hosted Collections. Once a Personal Collection is incorporated into Your Institution's Hosted Collections, it becomes part of Your Institution's Hosted Collections (and Your Institution will determine who has access to that Local Content).

Unlike Personal Collections, which may only be shared within one institution using the ARTstor Access Software, Hosted Collections may be shared among multiple institutions who are using ARTstor, provided that doing so does not violate any third party rights (as determined by Your Institution) and subject to the terms of this Rider.

- C. ***Contributed Collections.*** If Your Institution wants to share a Hosted Collection with all institutions participating in the ARTstor Digital Library, and if ARTstor determines that such Hosted Collection is suitable for incorporation into the ARTstor Digital Library, the Parties will mutually agree upon the terms of such an understanding under a separate agreement ("Contributed Content Agreement"). Upon execution of a Contributed Content Agreement, the relevant content will no longer be deemed "Local Content" or part of Your Institution's "Hosted Collections" and will no longer be subject to the terms of this Rider; such content instead will be deemed "ARTstor Content" and will be subject only to the terms of the Contributed Content Agreement.

2. Compliance with ARTstor Digital Library License Agreement and Terms and Conditions of Use. To minimize potential confusion when accessing and using Local Content along with ARTstor Content through the ARTstor Access Software, Your Institution agrees that, when accessing or using the Local Content through the ARTstor Access Software, it will only do so in accordance with the ARTstor Terms and Conditions of Use.

3. Protocols for Incorporation of Local Content onto ARTstor's Servers.

- A. In accordance with a timetable mutually agreed upon by Your Institution and ARTstor, ARTstor will provide Your Institution with the following: (1) a maximum of ten (10) terabytes of storage on ARTstor's servers for Your Institution's Hosted Collections; (2) assistance from ARTstor staff to facilitate the incorporation of Your Institution's Hosted Collections onto ARTstor's servers; and (3) up to four updates by ARTstor staff per calendar year. In addition, ARTstor is currently developing a set of tools that will enable administrators at Your Institution to maintain and manage hosted collections. ARTstor will provide those tools to Your Institution as they become available ("Hosting Tools").
- B. ARTstor may periodically establish, and Your Institution agrees to comply with, additional general practices, protocols, requirements, and limits concerning the Hosting Services and the loading of Local Content onto ARTstor's servers (such as the types of files, metadata structures and characters that ARTstor supports) ("Hosting Protocols"). These Hosting Protocols are subject to change, provided that none of these Hosting Protocols conflict with the terms of this Rider or the License Agreement unless expressly agreed to in writing by Your Institution and ARTstor. Should Your Institution decide that it does not want to comply with such Hosting Protocols, Your Institution may terminate the Hosting Service upon providing ARTstor with 60 days written, advance notice, following the termination procedures described in Section 8(A) below. ARTstor

will not be responsible for any problems, errors, claims, threatened claims or liabilities arising in any way with the Hosting Services should Your Institution or should others with whom Your Institution has shared its Hosted Collections not follow such Hosting Protocols or the terms and conditions of this Rider.

4. Timeline and Fees for Incorporation of Local Content onto ARTstor's Servers.

- A. Timeline. Upon receipt of the image and data files for each Hosted Collection from Your Institution, ARTstor will evaluate the materials and provide Your Institution with an approximate date for the release of each Hosted Collection (or the release of subsequent updates to each Hosted Collection, if applicable and subject to a maximum of four updates per calendar year). This estimate, however, shall not serve as a guarantee that the Hosted Collection will be available by the anticipated release date. Due to the varying complexities associated with different collections of images and data, certain Local Content collections may require significant preparation time by ARTstor staff before incorporating the collections onto ARTstor's servers, particularly if the collections have complex metadata schema or require other technical development by ARTstor staff.
- B. Fees. For the duration of this Rider for Phase Two of the Hosting Services, ARTstor will provide the items identified in Section 3(A) above to Your Institution free of charge, provided that the Hosted Collections conform to ARTstor's existing metadata schema or may easily be converted to ARTstor's existing metadata schema. ARTstor may charge fees for those Hosted Collections that require complex metadata mapping or other technical development by ARTstor staff in preparation for incorporating such content onto ARTstor's servers. If ARTstor determines that a Hosted Collection requires complex metadata mapping or other technical development by ARTstor staff, ARTstor will provide Your Institution with a written price quote and will not perform any services in connection with such Hosted Collection absent express written authorization from Your Institution.
- C. Payment Terms. Any applicable fees for Hosting Services will be agreed upon by the Parties in advance and in writing (such writing will be attached hereto as Schedule 2 and incorporated herein by reference) and are in addition to fee(s) associated with licensing the ARTstor Digital Library. Any applicable fees shall be due and payable thirty (30) days after the date of invoice. 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. and in U.S. dollars.

5. Liability for Local Content.

- A. Your Institution understands and agrees that ARTstor shall not be liable in any way for the selection or hosting of any Local Content, including Hosted Collections (regardless of who uploads such Local Content onto ARTstor's servers), or for any use, display, performance, reproduction, or distribution of such Local Content. In no event shall the indemnification provisions in section 12.4 of the License Agreement extend or apply in any way to Local Content, Hosted Collections, or to the Hosting Services. Your Institution represents and agrees that it has read and agreed to the provisions of Section 3.6 of the ARTstor License Agreement and that it will not violate any third party right (including, for example, contractual rights or copyrights) in posting such Local Content on ARTstor's servers, or in accessing, using (including reproducing, displaying, and making performances of) and/or sharing such Local Content. Your Institution further

understands that it may need to take particular care when sharing Hosted Collections with other institutions or individuals to ensure that no third party rights are violated in doing so.

- B. Your Institution understands and agrees that ARTstor shall not be held liable in any way for any Local Content that might be deemed offensive, inflammatory, obscene, defamatory, or otherwise unsuitable for some users. In the event that Your Institution is serving a wide range of audiences, including audiences of different age groups, in the scholarly and educational communities, Your Institution takes sole responsibility for determining whether the Local 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 Local Content to audiences of different age groups; and (b) any laws regulating children's use of the Internet. Your Institution agrees to take reasonable steps to inform its Authorized Users of these disclaimers when they are accessing Local Content in the ARTstor Digital Library. If Your Institution will be providing individuals under the age of 13 with access to Hosted Collections through the ARTstor Digital Library, it is Your Institution's sole responsibility to comply with the Children's Online Privacy Protection Act, including ensuring that such individuals are not providing any personally identifiable information to access those Hosted Collections.
- C. Your Institution acknowledges and agrees that ARTstor and its designees shall have the right to at any time remove from the ARTstor servers and disable access to any Local Content (including Hosted Collections or portions thereof) that violates the terms of the ARTstor License Agreement or this Rider.

6. Limited Licenses.

- A. In connection with these Hosting Services, Your Institution hereby grants ARTstor a limited, royalty-free and non-exclusive license to: access such Hosted Collections; to reproduce such Hosted Collections as needed to provide the Hosting Services, subject to the terms herein; and to distribute or otherwise make available, make performances of, and display Local Content to Your Institution, and others as directed by Your Institution. This license will terminate with respect to: (a) any portion of the Hosted Collections when such portions of the Hosted Collections are permanently removed from the ARTstor servers; or (b) all of Your Institution's Hosted Collections that are on ARTstor's servers, within 30 calendar days from when (i) Your Institution provides notice to ARTstor in writing that it is terminating the Hosting Services or when the Hosting Services expire and are not renewed within 60 calendar days of such expiration, or (ii) the License Agreement is terminated. No right, title, or interest in the Hosted Collections is granted to ARTstor under this Rider, other than the limited license expressly set forth herein.
- B. Neither Party may use the other's name or trademark(s) in any way likely to cause confusion as to the origin of goods or services, or to endorse or show affiliation with the other, except as specifically approved in writing. Notwithstanding the foregoing, ARTstor may use Your Institution's name in brochures or in other materials to identify Your Institution as a user of the Hosting Services and as an institution licensing the ARTstor Digital Library, and Your Institution is encouraged to use ARTstor's name to announce its use of the ARTstor Hosting Services and its use of the ARTstor Digital Library, provided that Your Institution correctly identifies ARTstor as a registered mark

in all of its written materials and supplies ARTstor with a copy of such announcements upon ARTstor's request.

7. Downloading. ARTstor will permit Authorized Users at Your Institution to download images from the Hosted Collections at 1024 pixels on the long side unless otherwise directed by Your Institution in writing to restrict the size of downloaded images from the Hosted Collections to 400 pixels on the long side. In the event that the original size of an image in the Hosted Collections is smaller than 1024 pixels on the long side, ARTstor will permit Authorized Users at Your Institution to download such images at 400 pixels on the long side.

8. Term and Termination.

- A. Hosting Services.

- (1) The Phase Two Hosting Services will take effect as of the date of this Rider and will continue for a three-year term, or until ARTstor rolls out the next phase of the Hosting Services, whichever comes first, in which case the Parties may need to sign a new rider with separate terms. ARTstor's aim in providing the different phases of Hosting Services is to develop a service that is as economical as possible, while also providing high quality service to Your Institution. Notwithstanding the foregoing, the Hosting Services may be terminated: (a) by ARTstor, should Your Institution, Your Institution's Authorized Users, and/or other persons or institutions selected by Your Institution to have access to the Hosted Collections repeatedly violate the provisions of this Rider or the ARTstor License Agreement, after notice and an opportunity to cure, except that ARTstor may terminate the Hosting Services after repeated violations of Section 5(A) of this Rider, or after repeated violations of section 3.6 of the ARTstor License Agreement, without notice and an opportunity to cure (consistent with the Digital Millennium Copyright Act); or (b) by Your Institution, for any reason, and such termination shall become effective after 60 calendar days written notice to ARTstor, sent either in writing via first class mail, or by both facsimile and email, to ARTstor, directed to the ARTstor legal contact specified in Exhibit A to the License Agreement. In the event of termination, any fees paid to ARTstor for the development of specific Hosted Collections shall not be reimbursable to Your Institution unless ARTstor has not yet incurred costs to provide metadata mapping or other technical development for the corresponding collections.
 - (2) Within 30 calendar days from the effective date on which the Hosting Services terminate, Your Institution's Hosted Collections shall be removed from ARTstor's servers, and within 60 calendar days from the effective date on which the Hosting Services terminate or expire, ARTstor will destroy all copies of such Hosted Collections in its possession.
 - (3) Should Your Institution determine that, for legal or other reasons, it wants to remove certain image(s) from the Hosted Collections, Your Institution will provide written notice to ARTstor in the form of a list of images to be removed from the Hosted Collections, and ARTstor will remove such images from the Hosted Collections and from ARTstor's servers within 10 business days after receiving such written notice. Any images removed pursuant to this paragraph will not count towards the one-terabyte maximum set forth in Section 3(A)(1).

- B. ARTstor License Agreement. ARTstor is striving to make available some basic Hosting Services to ARTstor participating institutions free of charge or, if that is not practicable, for minimal fees. In return for the investment of staff time and resources that ARTstor is directing toward the development of the Hosting Services, Your Institution agrees that it will continue to license the ARTstor Digital Library for a minimum of three calendar years from the date that Your Institution signs a Hosting Services Rider, subject to the availability of funds at Your Institution, as set forth in Section 10.2 of the ARTstor Digital Library License Agreement. It is understood that, during the initial three calendar years after Your Institution signs the Hosting Services Rider, any annual increase in Your Institution's Annual Access Fee (as defined in Attachment A of the ARTstor Digital Library License Agreement) shall not exceed three percent of the Annual Access Fee charged in the previous calendar year. The terms of this provision shall expressly prevail in any conflict with the terms of the ARTstor Digital Library License Agreement between Your Institution and ARTstor.
9. Unavailability of Hosting Services. ARTstor shall seek to provide Your Institution (and to others with whom Your Institution is sharing such Hosted Collections) with continuous access to the Hosted Collections. However, Your Institution recognizes that the Hosting Services may not be available from time to time due to maintenance of the server(s), the installation or testing of software, the loading of Hosted Collections onto ARTstor's servers, 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. ARTSTOR SHALL NOT BE HELD LIABLE FOR ANY LOSS, INJURY, CLAIM, LIABILITY OR DAMAGE OF ANY KIND RESULTING FROM THE UNAVAILABILITY OF THE HOSTED COLLECTIONS OR LOCAL CONTENT, OR THE INTERRUPTION OF THE HOSTING SERVICES. Notwithstanding the foregoing, if the Hosting Services fail to operate in conformance with the terms of the License Agreement and this Rider, Your Institution agrees to promptly notify ARTstor, and ARTstor shall take all practicable steps to repair the nonconformity in a timely manner. In the event, due to causes within its reasonable control, ARTstor is unable to provide Your Institution with access to the Hosted Collections for an aggregate period of fourteen (14) consecutive days during any twelve (12) month period, Your Institution may terminate the Hosting Services Rider. As set forth above in Section 8(A)(1), in the event of termination, any fees paid to ARTstor for the development of specific Hosted Collections shall not be reimbursable to Your Institution unless ARTstor has not yet incurred costs to provide metadata mapping or other technical development for the corresponding collections.
10. Taxes and Costs Associated with Using the Hosting Services. Your Institution shall be solely responsible (and ARTstor shall in no way be responsible) for any and all third-party costs, fees, and applicable taxes relating to the access and use of the Hosted Collections, including without limitation the costs associated with establishing access to the ARTstor servers, any hardware costs, and any telecommunications or other charges imposed by carriers, proprietary network operators, and/or Internet access providers, as well as for printing costs associated with printing Hosted Collections.
11. Disclaimer of Warranties. **IN ADDITION TO THE DISCLAIMERS IN THE LICENSE AGREEMENT, WHICH APPLY FULLY HEREIN, THE HOSTING SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND ARTSTOR DISCLAIMS TO THE FULLEST EXTENT OF THE LAW ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS OF ANY KIND (EXPRESS, IMPLIED, ORAL, OR WRITTEN)**

RELATING IN ANY WAY TO: (A) THE HOSTING SERVICES AND/OR THEIR ACCESS AND USE; AND/OR (B) HOSTED COLLECTIONS, LOCAL CONTENT AND/OR THEIR POSTING OR REMOVAL FROM THE ARTSTOR SERVERS, ENABLING OR DISABLING ACCESS TO LOCAL CONTENT AND HOSTED COLLECTIONS, AND ANY AND ALL REPRODUCTIONS, DISPLAYS, TRANSMISSIONS, DISTRIBUTIONS, AND USES MADE BY ANYONE OF LOCAL CONTENT (INCLUDING HOSTED COLLECTIONS) IN ANY WAY, INCLUDING FOR EACH WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS LIMITED BY LAW.

12. Survival. Sections 5 and 8 through 14 of this Rider shall survive the termination of this Rider and remain in effect unless expressly indicated otherwise herein.
13. Authority to Enter into Rider. Each Party represents and warrants that it has the authority to enter into this Rider, and to bind that Party to the terms and conditions herein. Each Party further represents and warrants that it has caused this Rider to be executed by a duly authorized representative.
14. Entire Agreement. This Rider and the ARTstor License Agreement constitute the entire agreement of the Parties with respect to the matters contained herein, and supersede all prior oral and written agreements between the Parties with respect to the subject matter herein. Neither this Rider nor the ARTstor License Agreement shall be modified or amended except by a writing duly executed by authorized representatives of the Parties.
15. Levels of Access. ARTstor agrees to support several levels of image sharing (i.e., access) for Your Institution, including sharing a Hosted Collection(s) within a single campus at Your Institution and sharing a Hosted Collection(s) among all of Your Institution's campuses. ARTstor will work with Your Institution's Hosting Administrator and other collection builders at Your Institution to specify access at the image level for such Hosted Collection(s). ARTstor is exploring ways to enable image sharing within the ARTstor community (i.e., fellow hosting institutions) as well as the option of providing access to the general public for selected images.
16. Metadata Upload Tool. ARTstor is developing software that will allow Your Institution to upload Your Institution's metadata. It is anticipated that this tool, which will upload and link images and metadata, will be appropriate for novice users, will use a common input format, such as tab-delimited text, and will allow for batch loading of records. ARTstor will endeavor to develop this tool by Summer 2009, although it cannot provide guarantees with respect to deliverable dates. Upon Your Institution's request, Your Institution may obtain a periodic update on the status of ARTstor's development of this tool by contacting hosting@artstor.org. Upon mutual consent of the Parties, Your Institution may serve as a tester for the metadata upload tool during this development phase.
17. Cross-Collection Searching. ARTstor will provide the end user with the capability of searching across ARTstor, across all Hosted Collections within Your Institution (e.g. UC wide), across certain Hosted Collections at a particular end user's campus, or within individual end users' collections (personal collections) at the user's option. This option will be available from the ARTstor search/home page and advanced search screen.
18. During Phase Two of the Hosting Services, Your Institution shall not incur additional costs for hosting multiple collections, nor shall the cost of Hosting Services increase with the number of

images in the Hosted Collections, other than what is specified in Sections 3(A) and 4(B). ARTstor reserves the right to charge fees and to increase fees when it rolls out the next phase of the Hosting Services.

19. ARTstor will exercise reasonable efforts to return to CDL a copy of the source TIFF images contributed by Your Institution's campuses to ARTstor. Also, upon written request, ARTstor will provide to Licensee all images and metadata from the Hosted Collections in derivative file formats. However, in no event is ARTstor serving as an archive for Your Institution's images or metadata.
20. Subject to Sections 3(A) and 4(B) and upon Your Institution's reasonable request, ARTstor will perform batch load of large files contributed by Your Institution at no additional cost to Your Institution. The timeline for such batch loading shall be mutually agreed upon by the Parties.
21. ARTstor agrees to engage in reasonable efforts to work towards implementation to support Unicode compliance.

IN WITNESS THEREFORE, the Parties have caused this Rider to be executed as of the Hosting Agreement Date.

Your Institution's Name:

ARTstor Inc.

California Digital Library on behalf of The
Regents of the University of California

Signature of Primary or Legal Contact identified in
ARTstor License Agreement

Signature

Printed Name: _____

Printed Name:

Title: Interim Executive Director

title: General Counsel and Secretary

Date: 4-21-08

Date: 3/22/08

Signature of Hosting Administrator identified on
Schedule 1

Printed Name: _____

Title: _____

Date: _____

SCHEDULE 1 TO HOSTING SERVICES RIDER

Name of Your Institution: _____

Please note that ARTstor will use all contacts supplied by Your Institution in Exhibit A to the ARTstor License Agreement to contact Your Institution and all IP information supplied by Your Institution in Exhibit A to the ARTstor License Agreement in providing access to Hosted Collections posted on ARTstor's servers. It is understood that ARTstor currently cannot limit access to Hosted Collections to an IP range that is narrower or more limited than what Your Institution specified in Exhibit A to the ARTstor License Agreement, except that ARTstor can limit access to Hosted Collections to only those Authorized Users with Instructor-Level Privileges, as defined below. If it becomes technologically feasible for ARTstor to limit access to an IP range that is narrower or more limited than what Your Institution specified in Exhibit A and if Your Institution would like to utilize such optional access restrictions, the Parties will set forth their understandings in writing (such writing will be attached hereto and incorporated herein by reference).

1. General name attributed to the Hosted Collection(s) (please note that ARTstor does not screen this content before placing it on ARTstor's servers): _____

2. Contact Information for Your Institution's Hosting Administrator:
Name: _____ Tel. No.: _____
Title: _____ Fax No.: _____
Address: _____ Email: _____
3. Please indicate whether Your Institution would like ARTstor to restrict access to Hosted Collections to only those Authorized Users at Your Institution that have registered for instructor-level privileges, which allow access to more advanced features, such as creating shared folders and adding instructor commentary ("Instructor-Level Privileges"):
☐ ARTstor is authorized to provide access to Hosted Collections only to those Authorized Users at Your Institution that have registered for Instructor-Level Privileges.
☐ ARTstor is authorized to provide access to Hosted Collections to all Authorized Users at Your Institution, regardless of whether an Authorized User has registered for Instructor-Level Privileges.
4. If Your Institution wants its Hosted Collections to be made available to institutions other than Your Institution, please list such institutions and the name and contact information (including address, telephone number, and email) for a contact person at each of those institutions below (attach additional sheets if necessary):

Note: Local Content may be transmitted through ARTstor's Hosting Services to only those institutions licensing the ARTstor Digital Library. If Your Institution elects to provide access to Hosted Collections only to those Authorized Users at Your Institution that have registered for Instructor-Level Privileges, Authorized Users at the institution(s) listed above, if any, must also have Instructor-Level Privileges to access Your Institution's Hosted Collections.