

SHARED SHELF SERVICE AGREEMENT

This Shared Shelf Service Agreement (the "Agreement") is entered into by and between ARTstor Inc. ("ARTstor" or "Licensor") and 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 ("Licensee"). Licensor and Licensee (individually a "Party," and collectively the "Parties") hereby agree as follows:

1. Definitions.

- a. "Core Software and Services" or "Shared Shelf" means the Shared Shelf Software and the services expressly provided by ARTstor to Licensee under sections 1(m), 3 and 4 herein.
- b. "Downtime" means that the Shared Shelf Software is unavailable to Licensee, as measured by the ARTstor server side error-rate, minus any Scheduled Downtime.
- c. "Downtime Period" means any period of Downtime lasting at least ten consecutive minutes.
- d. "Licensee's Administrator" means the individual(s) authorized by Licensee to administer on Licensee's behalf Licensee's Hosted Collections, including the ability to edit or modify, determine who has access to, distribute, display, and remove access to Licensee's Hosted Collections, or portions thereof, in Shared Shelf.
- e. "Licensee's Authorized Users" mean any or all of the individuals and/or categories of individuals designated by Licensee to access Licensee's Hosted Collections.
- f. "Licensee's Hosted Collections" means images, texts, and other materials that are owned and/or acquired by Licensee, and/or by Licensee's Authorized Users, and that are uploaded to the Shared Shelf Software for access by Licensee's Authorized Users. Licensee's Hosted Collections exclude the ARTstor Collections, which are collections of images, texts, and other materials made available by ARTstor through a digital repository with software tools created by ARTstor for noncommercial educational and scholarly uses ("ARTstor Digital Library"), as well as Shared Content.
- g. "Monthly Uptime Percentage" means the total number of minutes in a calendar month minus the total number of minutes of Downtime from all Downtime Periods in the same calendar month, divided by the total number of minutes in that calendar month. Downtime Periods resulting from the circumstances set forth in Section 4(a)(ii) shall not be used in determining the Monthly Uptime Percentage.
- h. "Optional Software and Services" means software, software tools, content and/or services other than the Core Software and Services, which ARTstor may either make available free of charge or for a fee to Licensee, such as: content migration services, archiving services, institutional branding of the Shared Shelf user interface, and making available a version of the Shared Shelf Software for the storage and use of audio or video files.
- i. "Scheduled Downtime" means Downtime scheduled by ARTstor for software and/or hardware maintenance, upgrades or related purposes of which ARTstor has notified Licensee at least three (3) calendar days prior to the commencement of such unavailability.
- j. "Shared Content" means images, texts, links and/or other content that is posted to or made available through Shared Forums. Notwithstanding the foregoing, Shared Content expressly excludes ARTstor Collections from the ARTstor Digital Library, as well as Licensee's Hosted Collections unless openly shared via such Shared Forums by Licensee's Administrator(s).
- k. "Shared Forums" are those portions of Shared Shelf that are accessible to all Shared Shelf Participating Institutions or that are openly accessible without access restrictions via the Internet, such as any open or shared wikis, blogs, or other open-access or shared spaces within Shared Shelf.
- l. "Shared Shelf Participating Institution(s)" means institutions subscribing to Shared Shelf.



- m. "Shared Shelf Software" means the core software platform and tools developed by ARTstor for use by Shared Shelf Participating Institutions and authorized users at those institutions (collectively "Shared Shelf Users"), and includes: (a) software tools to upload and catalogue content ("Shared Shelf Cataloging Workspace"); (b) software tools and a platform to manage and maintain content ("Shared Shelf Asset Manager"); (c) software tools that provide the ability to copy data from, and to submit candidate data to, controlled vocabulary lists ("Shared Shelf Vocabulary Warehouse"); (d) software tools that allow the user to post content in Shared Shelf to different repositories or websites ("Shared Shelf Publishing Manager"); (e) a user interface and software tools that allow the user to access, view, and actively use content (alongside ARTstor Collections in the ARTstor Digital Library) ("Shared Shelf Teach and Study Workspace"); and (f) software tools that allow administrators to administer their content, including to make, edit, delete and add to such content ("Shared Shelf Administrative Manager"). The term "Shared Shelf Software" refers to the software platform and tools only, and not to any content made available through such software platform and tools.

2. **Description of Service; Licenses.**

- a. **Description of Service.** Through this Agreement, ARTstor shall provide Licensee and Licensee's Authorized Users with access to the Core Software and Services, subject to the terms and conditions set forth herein. Should the Parties so agree, ARTstor shall also provide Licensee and Licensee's Authorized Users with Optional Software and Services, the terms and conditions for which shall be set forth in mutually signed appendices attached hereto.
- b. **License to Shared Shelf Software and Shared Content Created by ARTstor.** For the duration in which this Agreement is in effect, ARTstor grants Licensee and Licensee's Authorized Users a non-exclusive, worldwide, non-transferable, limited license to access and use the Shared Shelf Software, as well as any and all Shared Content created by ARTstor, in accordance with the terms and conditions herein.
- c. **Licensee's Hosted Collections.** For the duration in which this Agreement is in effect, Licensee grants ARTstor a non-exclusive, non-transferable, limited, free-of-charge license to reproduce, distribute, modify and adapt, display, and make performances of Licensee's Hosted Collections, solely for the purposes of providing the services expressly set forth herein to Licensee and Licensee's Authorized Users, in accordance with the terms and conditions herein. Nothing herein grants ARTstor any ownership rights to Licensee's Hosted Collections.

3. **Service Support.** For the duration of this Agreement:

- a. **Customer Support.** ARTstor shall make English-speaking customer support personnel available by telephone and e-mail from 9 a.m. to 6 p.m. U.S. Eastern Time (excluding public holidays) to address technical support issues relating to the use of the Shared Shelf Software. ARTstor will not provide as part of its customer support obligations guidance on questions other than those relating to technical support of the software, such as institutional policy or editorial decisions regarding Licensee's Hosted Collections.
- b. **Back-up Management/Storage of Licensee's Hosted Collections on Shared Shelf.** ARTstor will fully back-up Licensee's Hosted Collections on a daily basis to a back-up site, separate from the ARTstor servers at ARTstor's offices, for disaster recovery purposes to provide secure storage for the source files corresponding with Licensee's Hosted Collections. ARTstor will also provide Level 1 Preservation for Licensee's Hosted Collections, which preservation shall be provided in accordance with the National Digital Stewardship Alliance's current suggested guidelines: (<http://blogs.loc.gov/digitalpreservation/2012/09/help-define-levels-for-digital-preservation-request-for-public-comments/>). Notwithstanding the foregoing, unless the Parties sign an appendix hereto for any optional archival services, ARTstor makes no representations or guarantees about archiving Licensee's Hosted Collections, or that ARTstor will provide secure storage of derivative files corresponding to Licensee's source files.

4. **Service Levels and Service Credits.**

- a. **Service Levels.**
- i. **Target Monthly Uptime Percentage.** ARTstor shall provide a Monthly Uptime Percentage for the Shared Shelf Software of 99.5% per calendar month (the "Target Monthly Uptime Percentage").
- ii. **Exclusions.** The following Downtime shall not be included in calculating the Monthly Uptime Percentage: (A) Scheduled Downtime; or (B) any Downtime attributable to: 1) internet connectivity, internet infrastructure issues,

domain name service (DNS) or other failures or outages resulting from Internet anomalies or other network or service issues not attributed to facilities and/or equipment operated by ARTstor or which are due to circumstances beyond ARTstor's reasonable control; 2) network or service availability issues related to denial of service attacks, spamming, mail bombing or other flooding techniques, malware, hackers, sabotage, viruses, worms or other wrongful actions, except to the extent that ARTstor could have reasonably prevented such network or service availability issues caused by third parties through the use of commercially reasonable software protections incorporated into Shared Shelf; 3) failures during a Shared Shelf *beta* or trial period; or 4) other acts of *force majeure* (such as electrical outages, acts of terrorism, etc.) that are outside of ARTstor's reasonable control.

iii. Scheduled Downtime. ARTstor shall make all efforts to schedule Scheduled Downtime during times that are least disruptive to the majority of Shared Shelf Participating Institutions, and shall provide at least three (3) calendar days notice by electronic mail to Licensee's Primary Contact identified in Appendix A of any Scheduled Downtime.

b. Service Credits.

i. Applying for a Service Credit. If Licensee believes that ARTstor has failed to meet the Target Monthly Uptime Percentage for the Shared Shelf Software in a given month, Licensee shall notify ARTstor's Primary Contact in Appendix A hereto within sixty (60) days of such month with the following information: (a) the date(s) and time(s) on which the outage(s) occurred; (b) the identity of the individual and/or institution reporting the outage(s); and (c) the type of computer(s) and/or computer network(s) being operated by the individual and/or institution reporting the outage. ARTstor shall investigate the source of the outage within thirty (30) days of the date on which ARTstor receives such notice from Licensee. Licensee shall make itself reasonably available to ARTstor during such time to facilitate such investigation. Following the end of this thirty (30)-day investigation period, ARTstor shall determine the Monthly Uptime Percentage for Licensee, and shall so notify Licensee, along with a description of how ARTstor arrived at the Monthly Uptime Percentage for Licensee during the given period in question. Should Licensee's Monthly Uptime Percentage fall below the Target Monthly Uptime Percentage, Licensee shall receive the Service Credit described in Section 4(b)(ii) below.

ii. Service Credits. If, after following the process set forth in Section 4(b)(i) above, ARTstor failed to provide Licensee with the Target Monthly Uptime Percentage in a particular month, Licensee shall be provided with a number of days of free service added to the end of the then-current Term, according to the following schedule: Monthly Uptime Percentage between 99.5% and 99% = 7 days of free service; Monthly Uptime Percentage between 99.0% and 95.0% = 14 days of free service; Monthly Uptime Percentage under 95.0% = 30 days of free service. It is understood by the Parties that the provision of Service Credits to Licensee shall be in full satisfaction of any and all liability on ARTstor's behalf for failure to meet the Target Monthly Uptime Percentage.

5. Fees, Costs and Expenses.

- a. Fees for Use of Shared Shelf. Licensee shall pay ARTstor for the Core Software and Services in accordance with the terms set forth in Appendix A. Fees and other terms for Optional Software and Services shall be set forth in mutually signed appendices to this Agreement.
- b. Other Costs and Expenses. Except as expressly set forth herein, Licensee shall be solely responsible for institutional connectivity to Shared Shelf, including but not limited to, all costs and expenses associated with any local hardware and any telecommunications or other charges imposed by carriers, proprietary network operators and/or Internet access providers, and any applicable taxes associated with accessing Shared Shelf.

6. Proprietary Rights.

- a. Shared Shelf Software and Optional Software. Except to the extent that ARTstor expressly shares components of Shared Shelf Software on an open source basis by posting them on the ARTstor website subject to open source licenses, the Shared Shelf Software and any optional software provided through Optional Software and Services ("Optional Software") and all related documentation are proprietary to ARTstor and/or third parties with whom ARTstor has entered into licenses, and nothing herein is intended to transfer or otherwise provide Licensee and/or Licensee's Authorized Users with any rights of any kind to such Shared Shelf Software and/or Optional Software, except for the limited license granted herein. Licensee represents that it shall not take any action that would impede, limit or alter ARTstor's or any third party's ownership rights in the Shared Shelf Software and/or Optional Software.

- b. Trademarks, Logos, Trade Names, Copyright Notices and Attributions. Neither Party may use the other Party's names, marks, and/or logos 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 list Licensee's name in brochures or other materials to identify Licensee as licensing Shared Shelf, and Licensee is encouraged to use ARTstor's name and the Shared Shelf name and logo to inform Licensee's Authorized Users about Shared Shelf. In addition, to the extent that Licensee seeks an institutionally branded version of the Shared Shelf Software, Licensee grants ARTstor a limited, non-exclusive license to use Licensee's names, marks and/or logos in developing such institutionally branded version.
- c. Licensee's Hosted Collections; ARTstor Collections. ARTstor shall only access and use Licensee's Hosted Collections in accordance with the terms of the license granted in section 2(c) above. Similarly, although Licensee and Licensee's Authorized Users may be able to access the ARTstor Collections alongside Licensee's Hosted Collections, Licensee may only access and use, or provide Licensee's Authorized Users access to and use of, the ARTstor Collections in accordance with the terms of the ARTstor Digital Library License Agreement, dated August 1, 2007.
- d. Shared Content Made Available through Shared Forums. ARTstor may make available through Shared Shelf certain Shared Forums to encourage the exchange of information or ideas among Shared Shelf Participants. Licensee, through the California Digital Library, represents and warrants that to the best of its knowledge all Shared Content that Licensee posts to or shares via Shared Forums does not infringe or violate any third party right of any kind. ARTstor shall not in any way be liable, and Licensee agrees to hold ARTstor harmless, for such Shared Forums, Shared Content, and for any use of Shared Content, including without limitation the distribution, display, performance, reproduction, adaptation or modification of Shared Content, or the removal of such Shared Content from Shared Shelf or Shared Forums, due to and in proportion to Licensee's acts or omissions.. ARTstor does not control, takes no responsibility for, makes no representations or warranties about, and does not endorse, any Shared Content, or any third-party sites or materials accessible through links in Shared Shelf. Should Licensee post Shared Content to such Shared Forums, to the extent it is legally able to do so, Licensee automatically grants a perpetual, worldwide, nonexclusive, free-of-charge license to all individuals and institutions accessing that Shared Content to reproduce, distribute, make public performances of, publicly display, and make adaptations or modifications of such Shared Content for the purposes for which such Shared Content was originally posted, and all related uses. ARTstor reserves the right to remove Shared Content should such Shared Content violate the terms of this Agreement or to facilitate the administration of Shared Forums, and to discontinue any Shared Forum and remove Shared Content made available through that Shared Forum at any time.

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

7. Liability for Shared Shelf Software, Licensee's Hosted Collections, Shared Content; Representations and Warranties.

- a. Shared Shelf Software. ARTstor represents and warrants that the Shared Shelf Software shall not violate any known third-party patents, copyrights, or trademarks, and that it shall exercise commercially reasonable efforts to ensure that the Shared Shelf Software does not contain any virus or other computer code, files or programs designed to interrupt, destroy or limit the functionality of Licensee's computer software, hardware or telecommunications equipment.
- b. Indemnification. ARTstor agrees to indemnify, defend, and hold harmless Licensee, its employees, officers, directors, and Licensee's Authorized Users for all costs, damages, reasonable attorneys fees, and other expenses arising out of any third party's claim(s) against Licensee, its employees, officers, or directors, or Licensee's Authorized Users, asserting that the Shared Shelf Software infringes that third party's patents, trademarks or copyrights, except that in no event shall ARTstor be liable or provide any indemnification for any claims to the extent that they relate to: (a) any use, adaptation and/or modification, reproduction, distribution, display or performance of the Shared Shelf Software not expressly authorized in writing by ARTstor herein, and/or that exceeds or violates the ARTstor Shared Shelf Terms of Use or the terms and conditions of use herein; (b) any and all content and/or other material of any kind used, adapted or modified, reproduced, distributed, shared, displayed or performed in connection with the Shared Shelf Software, including but not limited to Licensee's Hosted Collections

and Shared Content, links between Shared Shelf and other sites and/or content on those linked sites, and/or the ARTstor Collections (the indemnification for which shall be governed by the terms of the ARTstor Digital Library License Agreement, dated August 1, 2007); (c) any and all software made available on an open source basis; and/or (d) any use, adaptation and/or modification, reproduction, distribution, display or performance of the Shared Shelf Software or any component thereof following the termination or expiration of this Agreement. In connection with these indemnification obligations, ARTstor will control the defense of such claims, including the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such 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 with counsel of its selection at its sole expense.

- c. Third Party Hardware, Software and Services. Except as expressly set forth in writing herein, ARTstor assumes no liability whatsoever for any and all third party hardware, software or services used in connection with the Shared Shelf Software, nor for ensuring that such hardware, software and services are interoperable with Shared Shelf.
- d. ARTstor as Online Service Provider with Respect to Licensee's Hosted Collections and/or Shared Content. Licensee acknowledges and agrees that ARTstor does not screen, select or edit Licensee's Hosted Collections and/or Shared Content, and in making available Shared Shelf, is acting as an online service provider within the definition of the Digital Millennium Copyright Act at 17 USC § 512 (the "DMCA"). 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 Licensee's Hosted Collections and/or Shared Content, and/or any portion thereof, including without limitation any use, display, performance, reproduction, sharing, adaptation or modification, distribution and/or removal from the Shared Shelf Software of Licensee's Hosted Collections and/or Shared Content, and/or any portion thereof. For example, Licensee agrees that ARTstor shall not be liable and shall be held harmless for any errors or omissions in Licensee's Hosted Collections and/or Shared Content, or for any loss, claim, damage, or liability should Licensee's Hosted Collections and/or Shared Content violate or infringe any third party rights (including without limitation any patent, trademark, trade secret, copyright, contractual, or other proprietary rights) or any international, federal, state, or local law, statute, or regulation. Licensee further agrees to hold ARTstor harmless in the event that ARTstor acts pursuant to its DMCA obligations. ARTstor shall endeavor to provide Licensee with notice before removing any of Licensee's Hosted Collections pursuant to the provisions of the DMCA.
- e. Licensee's Use and Licensee's Authorized Users' Use of Shared Shelf. Licensee represents and warrants that it shall not, and shall take all reasonable steps to ensure that Licensee's Authorized Users shall not: (a) post, reproduce, modify or adapt, distribute, display or make performances of any content or other materials on Shared Shelf, or otherwise use Shared Shelf, in a manner that violates or infringes any third-party right(s) (including without limitation any intellectual property or contractual rights), or that violates any applicable international, federal, state or local law or regulation; (b) modify, obscure, or remove ARTstor or third-party copyright, trademark or other intellectual property notices; (c) use Shared Shelf to upload, reproduce, transmit or distribute any software viruses or other computer code, files or programs designed to interrupt, destroy, degrade or limit the functionality of any computer software, hardware, data, system or telecommunications equipment; (d) circumvent, disable or override any encryption features or other protections in Shared Shelf; and/or (e) intentionally disrupt Shared Shelf or servers or networks connected to Shared Shelf. ARTstor may at any time remove from the ARTstor servers any of Licensee's Hosted Collections or Shared Content that violates the terms of this section, and take other reasonable steps to enforce the terms of this section. Notwithstanding the foregoing, nothing in this Agreement is intended to limit the application or scope of the United States Fair Use Doctrine or other copyright exceptions or limitations under United States or other countries' laws.
- f. ARTstor's Shared Shelf Terms and Conditions of Use. ARTstor has posted on the ARTstor website, at www.artstor.org, and will post on the Shared Shelf interface, terms and conditions of use governing individual users' use of Shared Shelf (the "ARTstor Shared Shelf Terms of Use"). Because the Shared Shelf service may evolve over time, ARTstor may make changes from time to time to the ARTstor Shared Shelf Terms of Use. Should ARTstor seek to make material changes to the ARTstor Shared Shelf Terms of Use, ARTstor will notify Licensee's Primary and Legal Contacts in Appendix A by electronic mail, at least 30 days in advance, and if Licensee does not object within those thirty days, such changes shall be deemed effective at the expiration of such thirty day period. If Licensee objects to such changes, Licensee and ARTstor will exercise best efforts to resolve such objections and arrive at mutually acceptable language to address the proposed changes to the ARTstor Shared Shelf Terms of Use.

Licensee represents and warrants that it shall take all reasonable steps to ensure that Licensee's Authorized Users comply with the ARTstor Shared Shelf Terms of Use. In the event that Licensee becomes aware of any instance in which Licensee's Authorized Users are not complying with the ARTstor Shared Shelf Terms of Use, Licensee shall promptly contact ARTstor's Legal Contact in Appendix A hereto, and shall take all reasonable steps to stop any such activity. ARTstor may at any time remove from the ARTstor servers Licensee's Hosted Collection(s) or Shared Content that violates the ARTstor Shared Shelf Terms of Use, and take other reasonable steps to enforce the ARTstor Shared Shelf Terms of Use.

- g. Licensee's Shared Shelf Terms and Conditions of Use. Licensee may post terms of use governing the use of Licensee's Hosted Collections by Licensee's Authorized Users ("Licensee's Shared Shelf Terms of Use") within the Shared Shelf interface. Should Licensee post such terms of use, nothing in Licensee's Shared Shelf Terms of Use shall impose any obligations, liability, or restrictions of any kind on ARTstor, nor shall such provisions conflict with any provisions in the ARTstor Shared Shelf Terms of Use. Notwithstanding the foregoing, in the event of a conflict between the ARTstor Shared Shelf Terms of Use and Licensee's Shared Shelf Terms of Use, the ARTstor Shared Shelf Terms of Use shall automatically prevail.
- h. Maintain Security. Each Party represents and warrants that it shall exert reasonable efforts to maintain secure any and all IP addresses, usernames, passwords, and/or users' email addresses for Licensee's Authorized Users.
- i. **DISCLAIMERS. EXCEPT AS EXPRESSLY SET FORTH IN WRITING HEREIN, SHARED SHELF IS BEING PROVIDED ON AN "AS IS" BASIS AND ARTSTOR EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY, AND ANY AND ALL WARRANTIES, CONDITIONS, GUARANTEES AND/OR REPRESENTATIONS OF ANY KIND (WHETHER EXPRESS OR IMPLIED) IN CONNECTION WITH SHARED SHELF, THE CORE SOFTWARE AND SERVICES, THE OPTIONAL SOFTWARE AND SERVICES, LICENSEE'S HOSTED COLLECTIONS, SHARED CONTENT AND/OR SHARED FORUMS, AND/OR ANY COMPONENTS OR PORTIONS THEREOF, INCLUDING WITHOUT LIMITATION ANY AND ALL WARRANTIES OF FITNESS, MERCHANTABILITY, QUALITY, PERFORMANCE, ACCURACY, COMPATIBILITY, INFRINGEMENT, AND/OR SECURITY. Some jurisdictions do not allow the exclusion of certain warranties or limitations of liability, in which case the above limitations and exclusions apply to the fullest extent permitted by law.**
- j. Limitation of Liability. In no event will either Party be liable to the other Party for any incidental, indirect, special, punitive or consequential damages, notwithstanding the failure of essential purpose of any limited remedy.

8. **Incorporation of Shared Shelf Content into the ARTstor Digital Library and/or Images for Academic Publishing.** Should the Parties agree to make Licensee's Hosted Collections, or portions thereof, available through the ARTstor Digital Library, or through the Images for Academic Publishing service provided by ARTstor, the Parties will enter into a separate agreement setting forth the terms relating to the sharing of such content through such sites.

9. **Removal of Licensee's Hosted Collections.** ARTstor will provide tools that will allow Licensee's Administrator, and/or other persons authorized by Licensee, to remove Licensee's Hosted Collections, and/or portions thereof, from Shared Shelf. Should this Agreement be terminated, ARTstor shall delete Licensee's Hosted Collections from ARTstor's servers in accordance with section 11(d) below.

10. **Ongoing Availability of Shared Shelf.** In the event that ARTstor, or the Shared Shelf service, were to permanently cease to operate, ARTstor would so notify Licensee at least twelve (12) months prior to such cessation, along with a plan for transferring Licensee's Hosted Collections to Licensee. At a minimum, ARTstor would make available to Licensee the source files and corresponding cataloging data for Licensee's Hosted Collections in machine-readable format, in a time and manner intended to minimize all access-related disruptions to Licensee and Licensee's Authorized Users. In such an event, ARTstor would not be able to provide Licensee with any content other than Licensee's source files and corresponding cataloging data for Licensee's Hosted Collections, such as saved image groups, annotations, or Shared Content.

11. **Term and Termination**

- a. Term. This Agreement will become effective as of the Agreement Date set forth in Appendix A and shall remain in effect for an initial term, and for automatically renewable renewal terms, as set forth in Appendix A.

- b. Termination Without Cause. This Agreement may be terminated without cause at the conclusion of the then-applicable term, by notifying the other Party's primary contact not less than ninety (90) days prior to the conclusion of that term.
- c. Termination For Cause. In addition to the other rights of termination set forth in this Agreement, in the event that either Party believes that the other Party has materially breached any obligations, representations, or warranties under this Agreement, such Party shall notify the breaching Party's Legal Contact in writing. The breaching Party will have sixty (60) days from the receipt of such notice to cure the alleged breach and to notify the non-breaching Party's Legal Contact in writing that such cure has been implemented. If the breach is not cured within the 60-day period, the non-breaching Party shall have the right to terminate the Agreement upon written notice. In addition, ARTstor may terminate this Agreement and the licenses herein with 60 days written notice without the opportunity to cure if, in ARTstor's reasonable opinion, the cumulative effect of violations of the ARTstor Shared Shelf Terms of Use by Licensee's Authorized Users has caused material harm to ARTstor, a Shared Shelf Participating Institution and/or any third-party software providers. Termination of this Agreement by either Party shall not relieve Licensee of its obligation to pay any fees and/or costs accrued prior to the Agreement's termination date.
- d. Effect of Termination. Should either Party terminate this Agreement or the ARTstor Digital Library License Agreement between ARTstor and Licensee, the licenses in sections 2(B) and 2(C) above shall automatically terminate. In the event of termination, ARTstor will: (a) make available the source files and corresponding cataloging data for Licensee's Hosted Collections to Licensee, in machine-readable format; and (b) destroy all copies of Licensee's Hosted Collections on ARTstor's servers. In such an event, ARTstor would not be able to provide Licensee with any content other than Licensee's source files for Licensee's Hosted Collections; for example, ARTstor would not be able to provide Licensee with saved image groups, annotations, or Shared Content.

12. Miscellaneous.

- a. Authority to Enter into Agreement. Each Party represents and warrants that it has all authority and rights necessary to enter into this Agreement, that it has caused this Agreement to be executed by a duly authorized representative, and that it will perform its obligations hereunder in compliance with applicable federal, state and local laws and regulations.
- b. Export Restrictions and U.S. Government Licenses. Licensee acknowledges that Shared Shelf uses encryption and other software that may be subject to export, import and/or use controls by Government Authorities (as hereinafter defined) by way of law or regulation. Licensee agrees that the Shared Shelf Software will not be exported, imported, used, transferred or re-exported except in compliance with the laws and regulations of the national and/or other government authorities with authority over the country(ies) and/or territory(ies) from which the Shared Shelf Software is being exported or to which the Shared Shelf software is being imported (the "Government Authorities").
- c. Independent Contractor Relationship. The Parties are acting as independent contractors, and nothing contained herein shall be deemed to create an agency, joint venture, or similar relationship between the Parties. Neither Party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of the other Party, except as expressly permitted in writing herein.
- d. Notice. Notice shall be provided by first class mail, or alternatively by electronic mail followed by facsimile, addressed to the appropriate contact(s) in Appendix A. Notice shall be deemed effective upon actual receipt of such notice, or within seven (7) calendar days of such notice being sent, whichever is sooner.
- e. Governing Law; Dispute Resolution. This Agreement shall be governed by the federal and state laws of the United States of America, and shall be subject to the exclusive jurisdiction of the courts of the United States of America, excluding any laws that might direct the application of the laws or venues of another jurisdiction.
- f. Waiver; Severability. 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 waiver of other breaches of the same or other provisions of this Agreement. If any provision of this Agreement is 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 thereby.

- g. No Assignment. Neither Party to this Agreement shall assign, transfer, subcontract, or sublicense this Agreement or any of the rights, licenses or 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 all applicable terms and conditions herein.
- h. Construction. The rule of contract construction by which any vague or ambiguous terms are to be construed against the drafter shall not apply to this Agreement. The headings in this Agreement are for reference purposes only and shall not be construed against either Party.
- i. Survival. Sections 5, 6, 7, 11(d) and 12 shall survive the termination of this Agreement.
- j. Force Majeure. Neither Party shall be in breach of this Agreement if a failure to perform an obligation hereunder results from a condition that is beyond the Party's reasonable control, including but not limited to strikes, labor disputes, terrorist acts, third-party computer viruses, natural disasters, or governmental requirements.
- k. Entire Agreement; Counterparts. Unless expressly agreed to by the Parties, the terms and conditions of this Agreement shall supersede all prior and written agreements between the Parties with respect to the subject matter of this Agreement and shall, along with all appendices attached hereto (which shall be automatically and fully incorporated herein by reference), constitute the entire Agreement between the Parties with respect to the matters herein. Any Hosting Rider to the ARTstor Digital Library License Agreement or other agreement between the Parties through which ARTstor has been hosting Licensee's content is expressly terminated and superceded by the terms of this Agreement. Notwithstanding the foregoing, unless expressly stated herein, nothing in this Agreement shall override, impair or limit any other provisions of the ARTstor Digital Library License Agreement, dated August 1, 2007, between the Parties, which remains a separate, binding agreement between the Parties.

This Agreement may not be modified except by a writing duly executed by authorized representatives of the Parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last date written below.

Licensee (Name of Institution): Regents of the University of California, California Digital Library
 [Text deleted]

Signature: _____ Title: _____ Executive Director, California Digital Library
 Printed Name: [Text deleted] _____ Date: January 29, 2013

ARTstor Inc.
 [Text deleted]

Signature: _____ Title: ~~Counsel~~ ^{Acting} Counsel & Secretary
 Printed Name: [Text deleted] _____ Date: 3/18/13

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Appendix A: Access Information and Payment Terms

This Appendix A to the Shared Shelf Service Agreement is part of, and incorporates by reference all of the terms of, the Shared Shelf Service Agreement between ARTstor and the Licensee identified below.

(Please type or print clearly)

Licensee (Institution Name): Regents of the University of California
Licensee Address: California Digital Library, 415 20th Street, 4th Floor
Oakland, CA 94612 USA

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: [Text deleted]
Title: Collections Director
Address: 415 20th Street, 4th Floor
Oakland, CA 94612 USA
Telephone: [Text deleted]
Fax: 510.287.3825
E-mail: [Text deleted]

Licensee Technical Contact (required):

*Responsible for any technical questions regarding
access to hosted collections, or services provided*

Attn: [Text deleted]
Title: Sr. Development Programmer
Address: 415 20th Street, 4th Floor
Oakland, CA 94612 USA
Telephone: [Text deleted]
Fax: 510.287.3825
E-mail: [Text deleted]

Licensee User Support Contact (required):

*This person's name may be made available through
the ARTstor website as the contact for local support*

Attn: [Text deleted]
Sr. Information Svcs. Analyst
Address: 415 20th Street, 4th Floor
Oakland, CA 94612 USA
Telephone: [Text deleted]
Fax: 510.287.3825
E-mail: [Text deleted]

Licensee Contact for Legal Notices (required):

Attn: [Text]
Title: Licensing Manager
Address: 415 20th Street, 4th Floor
Oakland, CA 94612 USA
Telephone: [Text deleted]
Fax: 510.987.0243
Email: [Text deleted]

Licensee Contact for Billing Notices (required):

Attn: [Text deleted]
Title: CDL Acquisitions Specialist
Address: Geisel Library, Univ. Calif.
9500 Gilman Dr. #0175K La Jolla, CA 92093-0175
Telephone: [Text deleted]
Fax: 858.534.1256
Email: [Text deleted]

ARTstor Primary Contact:

User Services
ARTstor Inc.
151 East 61st Street
New York, NY 10065
Telephone: (212) 500-2400
Fax: (212) 500-2401
Email: userservices@artstor.org

ARTstor Contact for Legal Notices:

Office of the General Counsel
ARTstor Inc.
151 East 61st Street
New York, NY 10065
Telephone: (212) 500-2400
Fax: (212) 500-2424
Email: legal@artstor.org

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IP Information (addresses or domain ranges for computers at your institution(s)): Note: Please indicate if this is different from the information provided under the ARTstor Digital Library License Agreement.

IP Addresses: _____ (see below) _____

Type of Proxy server used, if used: _____ (see below) _____

IP information of proxy server, if used: _____

Are all of the above IP addresses static and restricted to use by only 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: _____

To be completed by ARTstor:

Agreement Date (Date on which Licensee will have access to Shared Shelf): 2/6/2013

Length of Initial Term and Length of Automatically-Renewal Terms of Agreement:

1 year

Payment Terms:

Storage-based Service Fees (Will Vary on an Annual Basis, Depending on Total Storage Size for Licensee's Hosted Collections and will include access to the Core Software and Services): Fees can be located on the ARTstor website: <http://www.artstor.org/subscribe/s-html/fee-ss.shtml>.

Initial Shared Shelf Storage-Based Service Fee for Licensee (to be mutually determined by ARTstor and Licensee): NA

FEE TERMS:

Fees Cover Core Software and Services. The Storage-Based Service Fees cover Core Software and Services only, which include the Shared Shelf Cataloging Workspace, Shared Shelf Asset Manager, Shared Shelf Vocabulary Warehouse, Shared Shelf Publishing Manager, Shared Shelf Teach and Study Workspace, and the Shared Shelf Administrative Manager. Any fees and other terms for Optional Software and Services shall be set forth in mutually signed appendices attached to this Agreement.

Fees for Higher Educational Institutions. These Storage-Based Service Fees apply only to institutions of higher education subscribing to the ARTstor Digital Library. Should Licensee terminate its subscription to the ARTstor Digital Library, this Shared Shelf Service Agreement shall automatically terminate within 60 days of such termination of the ARTstor Digital Library License Agreement.

Calculation of Storage-Based Service Fees. ARTstor and Licensee will mutually determine which Storage-Based Service Fee will be initially charged for access to and use of Shared Shelf under this Agreement, based upon the size of Licensee's Hosted Collection and the size classification of Licensee's institution, as determined by ARTstor. ARTstor will monitor the total storage space allotted to Licensee's Hosted Collections in Shared Shelf on a monthly basis thereafter and will notify Licensee if the size of its collection is approaching the next service fee tier. In the event that the size of Licensee's Hosted Collection requires that Licensee be charged at the higher service fee tier, ARTstor will invoice Licensee for any pro-rata increase in fees for the remaining portion of the year at the beginning of the next full month following such service tier elevation.

Billing Procedures. At the beginning of each calendar year, ARTstor will charge Licensee the Storage-Based Service Fee for the upcoming calendar year. As per above, should the size of Licensee's Hosted Collection require that Licensee be

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charged at a higher service fee tier during the course the calendar year, ARTstor will invoice Licensee for any pro-rata increase in fees for the remaining portion of that year at the beginning of the next full month following such service tier elevation. In the event that this Agreement is terminated, Licensee shall not be eligible for any refund of fees previously paid to ARTstor.

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 Appendix 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 agreements in the event that Licensee provides IP addresses pertaining to institutions or campuses other than those listed or indicated on Appendix A, or in the event that Licensee seeks to add additional institutions or campuses, or distance education programs, other than those currently listed in Appendix A.

Other. All fees are subject to reasonable change by ARTstor, and are subject to reasonable annual increases. All updated fees will be posted on the ARTstor website at www.artstor.org. All payments shall be due and payable thirty (30) calendar days after the date of invoice. Any payments made more than thirty (30) calendar days after they are due and payable shall be subject to a 10% annual interest charge.

[TO INCLUDE ONLY IF INSTITUTION IS A FULL SUBSCRIBER TO SHARED SHELF, BUT STILL WANTS TO MAINTAIN PREVIOUSLY HOSTED IMAGES]

Hosting Pilot Images

ARTstor allows institutions that previously participated in the ARTstor Hosting Pilot to continue accessing its previously hosted images alongside images uploaded to Shared Shelf. Should your institution elect this option, it would not have the ability to edit or make any other changes to the previously hosted content using the Shared Shelf Tools. Should your institution choose instead to have its previously hosted content fully migrated to Shared Shelf, ARTstor will migrate such content at no additional charge and the previously-hosted content will be used in the overall calculation of your Storage-Based Fee.

[TO INCLUDE ONLY IF INSTITUTION USED HOSTING PILOT]

Hosting Pilot Access Service.

ARTstor offers a Hosting Pilot Access Service through which it provides those institutions who participated in the ARTstor Hosting Pilot ("Hosting Pilot Participants") with ongoing access to the content that they posted to the ARTstor Digital Library software platform through the ARTstor Hosting Pilot ("Hosting Pilot Content"). As a Hosting Pilot Participant, you may continue to access that Hosting Pilot Content through the Shared Shelf Teach and Study Workspace, although you will not be able to edit or make any other changes to any of the Hosting Pilot Content using the Shared Shelf Tools. ARTstor also will not add additional content to the previously Hosted Pilot Content, edit metadata for existing Hosting Pilot Content or replace any images in the Hosting Pilot Content. ARTstor will, however, continue to provide troubleshooting support (e.g. if an image is not appearing correctly or downloading to OIV, ARTstor will correct it) and delete Hosting Pilot Content upon request.

As part of subscribing to Shared Shelf for the purposes of accessing the Hosting Pilot Content, you will also be permitted to upload 500 images into Shared Shelf at no extra charge. You will be able to edit and manage those 500 images using the Shared Shelf features and tools.

If you would like to add to more than the 500 allotted images into Shared Shelf, the full subscription Shared Shelf Storage-Based Fee will apply to all content uploaded to Shared Shelf. Your Shared Shelf Service Fees would be:

* An asset is defined as a source image file (e.g., TIFF, JPG, GIF, PNG, etc.) with one or more corresponding data records.

University of California ARTstor Shared Shelf
2013 Costs

Participation fees				Number of assets eligible for "static hosting"	"Static hosting" per-asset fees (@ \$0.02 cents per asset)	Estimated number of new images to add to Shared Shelf in 2013	Shared Shelf per-asset fees (see "Shared Shelf Fees" tab); note that first 5,000 assets are not subject to fees	TOTALS
Campus	Institutional Classification	Subscription Type	Institutional Classification Base Fee					
UC Berkeley	Very Large I	Collection Builder	\$ [Text deleted]	61,362	\$ [Text deleted]	30,000		\$ [Text deleted]
UC Davis	Very Large II	Passive Access	\$ [Text deleted]		\$ [Text deleted]			\$ [Text deleted]
UC Irvine	Very Large II	Passive Access	\$ [Text deleted]	1,639	\$ [Text deleted]			\$ [Text deleted]
UC Los Angeles	Very Large I	Passive Access	\$ [Text deleted]		\$ [Text deleted]			\$ [Text deleted]
UC Merced	Very Small	Passive Access	\$ [Text deleted]		\$ [Text deleted]			\$ [Text deleted]
UC Riverside	Large	Passive Access	\$ [Text deleted]		\$ [Text deleted]			\$ [Text deleted]
UC Santa Barbara	Very Large II	Passive Access	\$ [Text deleted]	6,581	\$ [Text deleted]			\$ [Text deleted]
UC Santa Cruz	Large	Passive Access	\$ [Text deleted]	4,838	\$ [Text deleted]			\$ [Text deleted]
CDL	[Text deleted]	[Text deleted]	[Text deleted]	28,658 (Archivision), 26,126 (Saskia) = 54,784 total images	\$ [Text deleted]			\$ [Text deleted]
[Text deleted] 'discount for 2013								\$ [Text deleted]

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University of California IP Address Ranges

Berkeley (UCB)

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(Former LBL IPs)

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Davis (UCD)

Range Start

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Range End

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Irvine (UCI)

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[Text deleted]

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Los Angeles (UCLA)

Range Start

[Text deleted]

Range End

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Merced (UCM)

Range Start

[Text deleted]

Range End

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Office of the President (UCOP)

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Riverside (UCR)

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[Text deleted]		

San Diego (UCSD)

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[Text deleted]

San Francisco (UCSF)

Range Start

[Text deleted]

Range End

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Santa Barbara (UCSB)

Range Start

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Santa Cruz (UCSC)

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