

## IMAGES FOR ACADEMIC PUBLISHING (IAP)

### INDIANAPOLIS MUSEUM OF ART TERMS AND CONDITIONS OF USE

THE IMAGES, AS DEFINED BELOW AND LISTED IN THE ASSOCIATED APPLICATION FOR REPRODUCTION OF MATERIALS AND PERMISSION ("APPLICATION"), ARE PROVIDED THROUGH THE IAP WEBSITE UNDER THE TERMS OF THIS INDIANAPOLIS MUSEUM OF ART LICENSE ("LICENSE"). THE IMAGES MAY BE REPRODUCED ONLY AS STATED HEREIN AND AS DESCRIBED IN THE APPLICATION. ANY USE OF THE IMAGES OTHER THAN AS AUTHORIZED UNDER THIS LICENSE OR COPYRIGHT LAW IS PROHIBITED.

BY USING THE IAP WEBSITE AND/OR BY EXERCISING ANY RIGHTS TO THE IMAGES GRANTED HEREIN, YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS OF THIS LICENSE. THE LICENSOR GRANTS YOU THE RIGHTS CONTAINED HERE IN CONSIDERATION OF AND CONDITIONED ON YOUR ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

#### 1. Definitions

- a. **"Caption"** means the art historical information with respect to the object in the Licensor's collection reproduced in connection with an Image, e.g., the culture that created the object, the time period when the object was created, the maker (if known), the materials used to create the object, the dimensions, etc.
- b. **"Copyright Notice or Copyright Information"** unless otherwise indicated, refers solely to the Image (and not the object depicted in the Image), and shall read: "Image © Indianapolis Museum of Art" or "Image Provided by Indianapolis Museum of Art"
- c. **"Credit Line or Credit Information"** refers to the owner and location of the object reproduced in an Image and the means by which the object was acquired by the Licensor.
- d. **"Images"** means the digital scans offered herein by the Licensor for reproduction in the Publication and listed in the Application.
- e. **"Licensor"** means Indianapolis Museum of Art, which is the entity that offers the Images under the terms of this License.
- f. **"Password"** means a password provided by Licensor to access the Images through the IAP website.
- g. **"Publication"** means the educational and/or scholarly book, article, website, CD-ROM, DVD or similar item described in the Application and published and distributed according to the terms of this License.
- h. **"You"** means an individual or entity exercising rights under this License who has not previously violated the terms of this License with respect to the Images, or who has received express permission from the Licensor to exercise rights under this License despite a previous violation.

#### 2. Limited License

Subject to the terms and conditions of this License, Licensor hereby grants You a one-time, worldwide, royalty-free, non-exclusive, perpetual license to exercise the rights in the Images as stated below:

- a. To reproduce and incorporate the Images into the Publication, and to reproduce the Images as incorporated in the Publication in the following manner:
  - i. The Publication will not exceed a total print run or pressing of 5,000 copies. The print run/pressing limitation shall include the first and all subsequent printings, in all

languages, in all territories. Each new edition of the Publication shall be subject to a separate license. A new edition shall include any reprinting or repressing with more than 25% changes or additions to the initial printing or pressing. No more than 25% of works of art reproduced in the Publication may consist of images in the collection of Licensor, whether Licensed Images obtained through this License or obtained elsewhere; You must obtain advance written permission directly from Licensor for such permission.

- ii. In an educational website that does not accept paid advertisements, and whose primary purpose is not commercial, and whose primary purpose does not include the selling of merchandise. For such use, You must include the following statement with the Credit Information and Copyright Information: "Reproduction of any kind is prohibited without express written permission in advance from Indianapolis Museum of Art."
  - iii. In a commercial subscription website with no more than 5,000 subscribers. Multiple end users accessing content through one subscription agreement shall be considered one subscription. For such use, You must include the following statement with the Credit Information and Copyright Information: "Reproduction of any kind is prohibited without express written permission in advance from Indianapolis Museum of Art."
  - iv. In archival versions of the Publication in non-profit electronic archives such as JSTOR ([www.jstor.org](http://www.jstor.org)) and/or in for-profit electronic library content providers such as Ebsco ([www.epnet.com](http://www.epnet.com)) or ProQuest ([www.umi.com](http://www.umi.com)).
- b. The above rights include the right to make such modifications as are technically necessary to exercise the rights granted herein. All rights not expressly granted by Licensor are hereby reserved, including but not limited to the rights set forth in Section 4.

### 3. Restrictions

The license granted in Section 2 above is expressly made subject to and limited by the following restrictions:

- a. You may not sublicense the Images, or transfer any of the Images to a third party for publication except as specifically noted herein, and for the purposes described herein. Should you be provided a password to access the Images, you must maintain the confidentiality of that password and may not share it with anyone else. You may not use or reproduce the Images, any trademarks, and/or the name (except to the extent that the name has been expressly provided by Licensor for use in the Credit Information) of the Licensor or ARTstor for any advertising or promotion purposes, logos, design elements, electronic interfaces, merchandise, or the front and/or back cover or any packaging of the Publication. You must reproduce the Images with fidelity: You may not alter, manipulate, tone, silhouette, overprint or manipulate any of the Images. You may not use the Licensor's name or trademarks, or those of ARTstor or the IAP website, in any manner except as may be expressly authorized in this Agreement.
- b. You may not exercise any of the rights granted to You in Section 2 above:
  - i. For use in or downloading to any database, including local databases for teaching and/or study purposes;
  - ii. In any derivative or ancillary publications or products; any film, documentary, video and/or audio production ( e.g. "moving pictures");
  - iii. In the creation of merchandise or products (whether or not for sale or distribution);
  - iv. For advertising or promotional purposes; or
  - v. For a disreputable purpose.
- c. If You reproduce the Images, You must keep intact all the Licensor's Copyright Notices and Credit Lines for the Images and publish and provide such Copyright Information and

Credit Information in a reasonable manner in the Publication. At a minimum, such Credit Information and Copyright Information must appear where, and as prominently as any other, comparable credit and copyright information is provided in the Publication. Should the Licensor provide You with a Uniform Resource Identifier ("URI") for any of the Images, the URI must remain intact and be reasonably provided and included in the Publication.

- d. You have no rights to the IAP website and the software developed to make the Images available, other than the limited license granted herein. You may not copy, distribute, modify, decompile, reverse engineer, circumvent or disable encryptions or other protections in the IAP website. You may not access the Images except through the IAP website, or as expressly authorized by Licensor.

#### **4. Third Party Rights**

This License addresses rights to use the Images only. You are responsible for obtaining any appropriate third party permissions to use the underlying works featured in the Images, including but not limited to copyrights/"artists rights," trademarks, or rights of privacy and publicity. You shall indemnify and hold the Licensor and ARTstor harmless against any and all claims arising from your use of the Images, and any use of the Images made by any third party to whom you have provided such Images. You shall immediately notify Licensor and ARTstor of any claim or threatened claim with respect to your use of the Images.

#### **5. Caption, Copyright Information, and Credit Information Disclaimer**

The Caption, Copyright Information and Credit Information supplied by Licensor is accurate to the best of Licensor's knowledge at the time of submission of an Image. However, such information may be subject to revision in the future; at no time does Licensor represent or warrant its accuracy.

#### **6. Representations, Warranties and Disclaimer**

UNLESS OTHERWISE MUTUALLY AGREED BY THE PARTIES IN WRITING, LICENSOR AND ARTSTOR OFFER THE IMAGES AND THE IAP WEBSITE "AS-IS" AND MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE IMAGES OR THE IAP WEBSITE. LICENSOR AND ARTSTOR 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 IAP WEBSITE OR SPECIFIC IMAGES, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, ACCURACY OR THE PRESENCE OR ABSENCE OF ERRORS (WHETHER OR NOT DISCOVERABLE), NON-INFRINGEMENT, COMPATIBILITY, MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE. LICENSOR AND ARTSTOR MAKE NO WARRANTIES WITH RESPECT TO ANY LINKS TO OR FROM THE IAP WEBSITE, NOR ANY CONTENT ON SUCH LINKED WEBSITES, AND SUCH LINKS SHALL NOT CONSTITUTE AN ENDORSEMENT OF SUCH WEBSITES. LICENSOR, 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. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SUCH EXCLUSION MAY NOT APPLY TO YOU.

#### **7. Limitation on Liability**

YOU UNDERSTAND THAT THE LICENSOR AND ARTSTOR ARE PROVIDING THE IMAGES AND THE IAP WEBSITE AS A PUBLIC SERVICE. EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR OR ARTSTOR BE LIABLE TO YOU ON ANY LEGAL THEORY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF THIS LICENSE OR THE USE OF THE IMAGES, EVEN IF LICENSOR AND/OR ARTSTOR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **8. Termination**

- a. This License and the rights granted hereunder will terminate automatically upon any breach by You of the terms of this License. Individuals or entities who have received the Publication from You under this License, however, will not have their licenses terminated provided such individuals or entities remain in full compliance with those licenses. Sections 1, 2, 4, 5, 6, 7 and 8 will survive any termination of this License.
- b. Subject to the above terms and conditions, the license granted here is perpetual. Notwithstanding the above, Licensor reserves the right to release the Images under different license terms, to otherwise modify these Terms and Conditions of Use, or to stop distributing the Images at any time; provided, however that any such election will not serve to withdraw this License (or any other license that has been, or is required to be, granted under the terms of this License), and this License will continue in full force and effect unless terminated as stated above.

#### **9. Miscellaneous**

- a. Rights granted herein are not assignable or transferable.
- b. This License is intended for persons 13 years of age and older; children under the age of 13 are prohibited from downloading Images.
- c. You have read and agreed to the terms of the ARTstor Privacy Policy posted on this IAP website.
- d. If any provision of this License is invalid or unenforceable under applicable law, it shall not affect the validity or enforceability of the remainder of the terms of this License, and without further action by the parties to this agreement, such provision shall be reformed to the minimum extent necessary to make such provision valid and enforceable.
- e. No term or provision of this License shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing and signed by the party to be charged with such waiver or consent.
- f. This License shall be governed by the laws of the State of New York. Any dispute arising out of or related to this permission shall be subject to the exclusive jurisdiction of the courts of the State of New York.
- g. Nothing in this License is intended to override uses otherwise permitted under the fair use doctrine at 17 USC 107 or other provisions of copyright law.

This License constitutes the entire agreement between You and the Licensor with respect to the use and reproduction of the Images in the Publication. This License shall supersede any prior oral or written understanding, representation and warranties between you and the Licensor concerning the reproduction of the Images in the Publication, and may not be modified or amended without the mutual written agreement of the Licensor and You.

