

DACS FILM LICENCE TERMS AND CONDITIONS 2016

1. Definitions and Interpretation

1.1 In this Agreement capitalised terms shall have the meanings given to them in the Term Sheet or as set out below:

"Artist" means the Artist set out in the Term Sheet;

"Commencement Date" means the Commencement Date as set out in the Term Sheet;

"Context of Exploitation" means the Context of Exploitation as set out in the Term Sheet;

"Credit" means a Credit as set out in the Term Sheet;

"Film" means a Film as set out in the Term Sheet, being the final cut of the Film as delivered to the principal distributor of the Film and any other versions, including the director's cut;

"Force Majeure Event" any event arising that is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war);

"Licence" means the Licence of rights granted to the Licensee by DACS under this Agreement;

"Licence Fee" means the Licence Fee as set out in the Term Sheet;

"Licensed Acts" means the right to:

- (a) make a film recording featuring the Work;
- (b) include such film recording featuring the Work in the Film;
- (c) exploit the Film via the Licensed Media,

but not the right to alter or adapt the Work;

"Licensed Media" means the Licensed Media as set out in the Term Sheet;

"Owner" means the Owner of the copyright in the Work, if different from the Artist;

"Payment Date" means the Payment Date as set out in the Term Sheet;

"Qualifying Claim" means any written claim made by a third party that the Licensee's use of the Work in accordance with this Licence infringes intellectual property rights owned or controlled by that that third party;

"Sales Tax" means any sales or other taxes including VAT levied on sales or supplies of goods which are recovered directly or indirectly as part of the selling or supply price and which are paid over to or collected by the direction of the relevant governmental authority;

"Term" means the Term as set out in the Term Sheet;

"Term Sheet" means the DACS Film Licence Term Sheet signed on behalf of DACS and the Licensee setting out the principal deal terms of this Agreement;

"Territory" means the Territory as set out in the Term Sheet;



“VAT” means value added tax pursuant to the Value Added Tax Act 1994 and each like tax imposed in addition or in substitution thereof;

“Work” means the Work set out in the Term Sheet, which is an original artistic work.

- 1.2 References to “including” and “include” mean respectively “including without limitation” and “include without limitation”.
- 1.3 The words “other” and “otherwise” are not to be construed as being limited by any words preceding them.
- 1.4 A “person” includes all forms of legal entity including an individual, company, body corporate (wherever incorporated or carrying on a business), unincorporated association, governmental entity and a partnership and, in relation to a party who is an individual, his legal personal representatives.
- 1.5 The words “writing” or “written” includes faxes, emails, and scanned documents sent by email.
- 1.6 Any reference to “Artist” shall mean Artist as applicable.
- 1.7 Any expressions used but not defined in this Agreement, but which are defined in the Copyright, Designs and Patents Act 1988 (the “Act”) shall have the meaning ascribed to them in that Act.
- 1.8 Words in the singular include the plural, and those in the plural include the singular.
- 1.9 Clause and schedule headings shall not affect the interpretation of this Agreement. References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this Agreement.
- 1.10 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. Grant of Rights

Subject to the terms and conditions in this Agreement, and in consideration of DACS’ receipt of the Licence Fee, DACS grants to the Licensee a non-exclusive licence to perform the Licensed Acts during the Term in the Territory.

3. Term

This Agreement shall commence on the Commencement Date and shall continue until the expiry of the Term unless earlier terminated in accordance with the termination provisions set out in Clause 11.

4. Restrictions

- 4.1 Title to, and ownership of, all copyright in the Work shall remain with DACS or the Artist.
- 4.2 All rights, whether now existing or created or discovered in the future and howsoever arising, which are not specifically granted to the Licensee under this Agreement are expressly reserved to DACS / the Artist. The Licensee shall not assert or represent to any person that it has any right, title or interest in the Work or any part thereof other than the rights expressly granted under this Agreement.

No Alterations to Work

- 4.3 The Licence does not include the right to alter or adapt the Work, other than to copy the Work into a different format in accordance with exigencies of the production process.



4.4 Nothing in this Agreement shall affect the moral rights of the Artist nor shall it be interpreted as a waiver of any moral rights of the Artist where subsisting.

No Promotional Use

4.5 Unless expressly set out in the Term Sheet, the Licensee may not:

- (a) use the Work in, or in connection with, any material advertising, publicising, exhibiting and exploiting the Film or any products deriving from the Film;
- (b) include any Work or part of the Work in a promotional or sponsorship message for the Licensee, the producer of the Film, any distributor of the Film or any third party;
- (c) incorporate the Work in any graphic title or logo of any Film.

4.6 The Licensee shall not use the Work or part thereof in such a way as to imply approval or endorsement of the Film, any distributor of the Film or any third party by the Artist.

No Direct Contact with Artist

4.7 The Licensee agrees to refrain from initiating any direct contact with the Artist in order to obtain waivers or separate agreements outside this Agreement regarding the Film.

Restrictions on Use

4.8 The Licensee shall ensure that the Film contains no derogatory references to the Artist or the Work.

Separate Licences Required

4.9 Where there are joint owners of a Work and DACS does not represent all of the parties owning or controlling the rights in such Work, the Licence only includes those rights owned or controlled by a member of DACS.

4.10 The Licence relates only to the copyright in the Work itself. It does not include a grant of rights in, and DACS gives no representation or warranty in respect of:

- (a) any reproduction of the Work;
- (b) any protected content whatsoever that may be included, featured or represented within the Work, including copyrights, trade marks, likenesses or image rights.

5. Licence Fee

5.1 The Licensee shall pay to DACS the Licence Fee on the Payment Date, subject to receipt of an invoice valid for VAT purposes.

5.2 The Licence Fee is non-returnable. For the avoidance of doubt, if the Licensee decides not to include the Work in the Film, or the Film does not get made or released, no part of the Licence Fee shall be repayable to the Licensee by DACS.

5.3 All payments shall be remitted by the Licensee in GBP sterling payable to DACS by cheque or by bank transfer to the bank account nominated by DACS. All currency exchange fees, remittance fees or other charges connected with payments by the Licensee hereunder shall be borne by the Licensee and shall not be deducted from the amount due to DACS.



- 5.4 All sums payable hereunder by the Licensee are net of VAT and/or any Sales Taxes applicable from time to time, which shall, where appropriate, be payable by the Licensee in addition to the Licence Fee.
- 5.5 Where the Licensee is required by any law for the time being in force to withhold from payments due hereunder any tax of whatsoever kind, the Licensee shall account for such tax properly and shall also supply to DACS at such times as it may request such information as the Licensee shall have been able to obtain concerning:
- (a) the amount of tax withheld; and
 - (b) the legal provision or requirement under which such tax is required to be withheld;
- and shall, at the request of DACS, carry out all such acts and provide all such information and documents as are reasonably necessary to enable DACS to obtain any tax credit or repayment provided for under the laws of any country for the time being in force.
- 5.6 Without prejudice to any other right or remedy of DACS, and without imposing an obligation to accept late payment, where any fees payable under this Agreement are not paid within 30 days of the due date, DACS shall exercise its statutory right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7 Acceptance by DACS of any sums hereunder shall not prevent DACS at any later date disputing the correctness of the sums paid or demanding particulars from the Licensee concerning the amount finally due and neither shall acceptance of any sum by DACS constitute a waiver of any breach of any term of this Agreement by the Licensee if any such breach shall have taken place.

6. Credits

The Licensee shall ensure that the Credit appears with reasonable prominence as part of the visual acknowledgements at the end of the Film in the credit roll.

7. Warranties and Representations

- 7.1 The Licensee warrants and represents to DACS that:
- (a) it has full right and title to enter into this Agreement;
 - (b) its use of the Work shall not reflect adversely on the image, goodwill or reputation of DACS or the Artist;
 - (c) it will not reproduce any Work in any material or in any way which is illegal, obscene, pornographic, indecent, defamatory or constitutes a malicious falsehood, constitutes an infringement of third party rights, or an invasion of privacy;
 - (d) unless expressly permitted in the Term Sheet, it will not include the Work, or part thereof, in a promotional for the Licensee, the producer of the Film, any distributor of the Film or any third party;
 - (e) it will not use the Work or part thereof in such a way as to imply approval or endorsement by the Artist of the Film, any distributor of the Film or any third party;
 - (f) it will not alter or adapt the Work or do any act which may infringe upon the moral rights of the Artist, unless expressly set out herein or as expressly agreed in writing by the Artist;
 - (g) each and every copy of the Film, shall contain the Credit;



- (h) it will not at any time do or suffer to be done any act or thing which will in any way impair or affect the copyright in the Work;
- (i) it will ensure that no exploitation of the Work shall facilitate or encourage reproduction by unlicensed third parties of a Work alone and out of context;
- (j) it will co-operate fully and in good faith with DACS and / or the Artist / Owner for the purpose of securing or preserving their rights in and to the Work; and
- (k) the Work will not be incorporated into a logo, service or trade mark relating to the Film or otherwise.

7.2 The Licensee indemnifies and agrees to indemnify and save and hold the Artist and DACS harmless and to keep the Artist and DACS at all times fully and completely indemnified of, against and from any claims, actions, proceedings, liability, loss, damage, costs and expenses which the Artist and/or DACS incur or suffer by reason of the Licensee being in breach of or failing to perform or which arise out of any non-performance by the Licensee of any of the warranties in Clause 7.1 or arising out of any claim by a third party claiming relief against the Artist or DACS by reason of the exercise of the rights granted in this Agreement.

7.3 DACS warrants and represents to the Licensee that:

- (a) it has been granted the right to enter into this Agreement by the Artist;
- (b) to the best of its knowledge and belief, the Artist owns and/or controls all right, title and interest in the copyright in the Work, unless otherwise advised in writing.

7.4 Save as set out in this Clause, DACS gives no warranties, representations or undertakings in respect of the Work.

7.5 Subject always to the Licensee's compliance with Clause 8, if applicable, DACS indemnifies and agrees to indemnify and save and hold the Licensee harmless and to keep the Licensee at all times fully and completely indemnified of, against and from any claims, actions, proceedings, liability, loss, damage, costs and expenses which the Licensee incurs or suffers by reason of DACS being in breach of any of the warranties in Clause 7.3.

7.6 DACS acknowledges that the Licensee gives no guarantee that the production of the Film will proceed to completion and the Licensee is not obliged to include the Work in the Film.

8. **Infringement**

Claims Against Third Parties

- 8.1 The Licensee shall, as soon as it becomes aware, give DACS in writing full particulars of any infringements or violations of any of DACS' / the Artist's rights in the Work.
- 8.2 The Licensee agrees not to take any action against any third party who it believes has infringed the Work without the prior written consent of DACS (however, nothing in this Clause shall restrict the Licensee's ability to take any action against a third party in relation to an infringement of the Film or the Licensee's own intellectual property rights).
- 8.3 The Licensee will, at the written request of DACS, give full cooperation to DACS in any action, claim or proceedings brought or threatened in respect of the Work, including joining in proceedings (at DACS' cost). All recoveries in any such action, claim or proceedings shall belong to DACS.

Claims By Third Parties

- 8.4 If the Licensee becomes aware that its use of the Work infringes any rights of another party, the Licensee shall immediately give DACS full particulars of the same in writing and shall make no comment or admission or compromise to any third party.
- 8.5 If any third party makes a Qualifying Claim, or notifies an intention to make a Qualifying Claim, against the Licensee, the Licensee shall:
- (a) as soon as reasonably practicable give written notice to DACS of the Qualifying Claim specifying the nature of the Qualifying Claim in detail;
 - (b) not make any admission of liability, agreement or compromise in relation to the Qualifying Claim without the prior written consent of DACS;
 - (c) give DACS and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Licensee, so as to enable DACS and its professional advisers to examine them and to take copies (at DACS' expense) for the purpose of assessing the Qualifying Claim;
 - (d) give DACS the conduct of all proceedings and responsibility for any proceedings or negotiations for the settlement of any Qualifying Claim and DACS shall, in its sole discretion, decide what action, if any, to take in respect of any such Qualifying Claim; and
 - (e) at DACS' cost take such action as DACS may reasonably request to avoid, dispute, compromise or defend the Qualifying Claim.
- 8.6 Subject to the Licensee's full compliance with Clause 8.5, DACS shall indemnify the Licensee against all liabilities, third party costs, expenses, damages and losses (including reasonable professional costs and expenses) suffered or incurred by the Licensee directly arising from a Qualifying Claim. However, in the event that a Qualifying Claim also includes a claim for any use of the Work by the Licensee in breach of this Agreement, the indemnity above shall not apply. Nothing in this Clause shall restrict or limit the Licensee's general obligation at law to mitigate any loss it may suffer or incur as a result of a Qualifying Claim.
- 9. Limitation of Liability**
- 9.1 Nothing in this Agreement shall operate to exclude or limit DACS' liability for:
- (a) death or personal injury caused by its negligence; or
 - (b) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (c) fraud; or
 - (d) any other liability which cannot be excluded or limited under applicable law.
- 9.2 Save as expressly set out, DACS shall not be liable to the Licensee for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 9.3 Save as set out in Clauses 7.5 and 8.6, DACS' total liability under this Agreement shall be limited to the amount of the Licence Fee actually received by DACS.

10. No Injunctive Relief

DACS acknowledges that any application to enjoin or restrain the production, distribution, exhibition, advertising or exploitation of the Film would be disruptive and damaging to the Film and to the Licensee's and third parties' interests in the Film, and DACS agrees not to apply for any such relief and accept that the recovery of damages in an action at law will provide a full and appropriate remedy for any loss or damage incurred by us as a result of any breach of this Agreement.

11. Termination

Either party may terminate this Agreement immediately at any time by written notice to the other party if that other party commits any material breach of its obligations under this Agreement which (if remediable) is not remedied within ten business days after the service of written notice specifying the breach and requiring it to be remedied. For the avoidance of doubt, the following shall be considered a material breach: (i) a failure to make payment by the due date, (ii) any use of the Work beyond the scope of the Licence, or (iii) any failure to accord the Credit.

12. Force Majeure

A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay to perform its obligations under this Agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay shall continue. The affected party shall take reasonable steps to mitigate the effect of the Force Majeure Event.

13. Notices

13.1 A notice given under this Agreement:

- (a) shall be sent (in the case of DACS for the attention of "Director of Services and Business Development") to the address set out in the Term Sheet (or such other address as the receiving party may have notified to the other, such notice to take effect five days from the notice being received); and
- (b) shall be:
 - (i) delivered personally; or
 - (ii) sent by pre-paid first class post, recorded delivery or registered post; or
 - (iii) if the notice is to be served by post outside the country from which it is sent, sent by registered air mail.

13.2 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery; or
- (b) in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
- (c) in the case of registered air mail courier, five days from the date of posting; or
- (d) if deemed receipt under the previous paragraphs of this Clause is not within business hours (meaning 9.00am to 5.30pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.



13.3 To prove service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.

14. **Assignment and Licence**

14.1 The Licensee may not assign this Agreement to any third party.

14.2 The Licensee may sub-license the right to exploit the Film containing the Work, provided that no sub-licence shall be greater in scope or term than the terms of the Licence, and the Licensee shall remain primarily liable to DACCS for all its obligations under this Agreement where any provisions contained in this Agreement have been breached by the Licensee's sub-licensees or assignees.

15. **Third Party Rights**

Save for the Artist, this Agreement is not intended to be enforceable by any third party.

16. **Variation and Waiver**

16.1 A variation of this Agreement shall be in writing and signed by or on behalf of both parties.

16.2 A waiver of any right under this Agreement is only effective if it is in writing and applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

16.3 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

17. **Further Assurance**

Each Party agrees upon request of the other Party from time to time promptly to execute and deliver all deeds and documents and to do all acts and things as shall be necessary, expedient or desirable to give effect to the terms and/or purpose of this Agreement.

18. **Severance**

18.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

19. **Entire Agreement**

The Term Sheet and these Terms and Conditions embody all the terms agreed between the parties relating to the inclusion of a copy of the Work and no oral representations, statements, inducements, warranties or promises by either party shall be binding and valid and this Agreement shall not be altered except by separate agreement signed by both parties.

20. **Governing Law and Jurisdiction**

20.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.



20.2 The parties irrevocably agree that the courts of England have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

21. **Execution**

This Agreement may be executed in any number of counterparts (including by way of faxed or scanned counterparts) and all counterparts shall together constitute one and the same Agreement, and the date of the Agreement shall be the date specified on the Term Sheet, or, if not specified, the date on which it is executed by the last party.

END OF TERMS AND CONDITIONS