

DACS Digital Accessibility Licence Museums and Galleries Terms and Conditions

1. Definitions and interpretation

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

"Advertisement" means a notice intended to promote the Organisation, the Licensee or any third party, such notice being available to the public without a charge of any kind being imposed to view it;

"Artist" means the creator of the relevant Work;

"Closed Media" means closed network media (i.e. not accessible via the Internet), such as touch screen interactive displays, handheld multimedia tour guides, or museum display screens

"Commercial Use" means any use of a Work for profit-making purposes, including selling copies of a Work or selling merchandise featuring a reproduction of a Work. For the avoidance of doubt, neither the inclusion of advertising on the Organisation's Website nor any fee payable to access the Organisation itself shall be considered Commercial Use.

"Credit" means a credit in the form set out in the Term Sheet;

"Force Majeure Event" means 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);

"Internet" means the World Wide Web and/or any other open digital network;

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

"Licensed Acts" means the right, for Non-Commercial Use only, to:

- (a) reproduce the Works;
- (b) make Works available; and
- (c) communicate temporary (i.e. without a permanent copy being made) copies of the Work to the public via the Internet

solely in order to display the Works on the Permitted Media in accordance with the terms of this Agreement. For the avoidance of doubt, the Licensed Acts do not include the right to alter or adapt any Work or perform the above acts in respect of only part of any Work (although a "zoom in" tool allowing closer inspection of a Work is permitted);

"Non-Commercial Use" mean use of a Work that is not a Commercial Use.

"Open Media" means any media that is connected to, and accessible via, the Internet;

"Owner" means the owner of the copyright (or any part of it) in a Work;

"Qualifying Claim" means any written claim made by a third party that such third party, and not DACS, controls the right to license the Licensed Acts;

"Service Provider" means any person, firm or company which designs or hosts the Organisation's Website or any other Permitted Media on behalf of the Licensee;

"Term" shall have the meaning set out in clause 10.1;

"Term Sheet" the term sheet setting out the principal deal terms of the Licence;

"Territory" means the United Kingdom and Eire, although it is acknowledged that the Open Media may be accessed by users throughout the world;

"VAT" means value added tax pursuant to the Value Added Tax Act 1994 and each like tax imposed in addition or in substitution.

- 1.1 References to **"including"** and **"include"** mean respectively including without limitation and include without limitation.
- 1.2 The words **"other"** and **"otherwise"** are not to be construed as being limited by any words preceding them.
- 1.3 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.
- 1.4 The words **"writing"** or **"written"** includes faxes, emails, and scanned documents sent by email.
- 1.5 Any expressions used but not defined in this Agreement, but which are defined in the Copyright, Designs and Patents Act 1988 shall have the meaning ascribed to them in that Act.
- 1.6 Words in the singular include the plural, and those in the plural include the singular.
- 1.7 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 these Terms and Conditions.
- 1.8 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. Licence

- 2.1 Subject to the terms and conditions in this Agreement, and conditional upon the Licensee's continued compliance with such terms and conditions, and in consideration of the payment of the Set Up Fee and the ongoing obligation to pay the Royalties, DACS grants to the Licensee a non-exclusive licence for the Term and in the Territory to perform the Licensed Acts.

Limitations on Licence

- 2.2 The Licence relates only to the copyright in a 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 (unless otherwise agreed in writing);
 - (b) any protected content whatsoever that may be included, featured or represented within the Work, such as (but not limited to) copyrights, trade marks, likenesses or image rights.
- 2.3 Where there are joint owners of the copyright in a Work and DACS does not represent all of the parties owning or controlling the rights in such Work, the Licence is not a licence for the rights owned or controlled by the joint owner(s) whom DACS does not represent.
- 2.4 Title to, and ownership of, all copyright in the Works shall remain with DACS or the relevant Owner, as applicable.
- 2.5 Nothing in this Agreement shall affect the moral rights of the creator of a Work, nor shall it be interpreted as a waiver of any moral rights of the creator of the Work wherever subsisting.

Acts Not Covered by the Licence

- 2.6 All rights, whether now existing or created or discovered in the future and howsoever arising, which are not expressly granted to the Licensee under this Agreement are expressly reserved to DACS / the Artist / Owner (as applicable). For the avoidance of doubt, the grant of rights in this Agreement does not include the right to include reproductions of the Work in any merchandising, physical published material, film or television programme, distance learning or course packs, or e-bulletins.
- 2.7 Other than to Service Providers, the Licensee may not sub-licence the rights granted in this Agreement to any third party or external website.
- 2.8 The Licence does not include the right to alter or adapt any Work (other than to copy the Work into a different format in order to effect the rights expressly granted in this Agreement).
- 2.9 The Licensee shall not use any Work, or part of any Work, in such a way as to imply approval or endorsement of the Licensee or any third party, or in any Advertisement or promotional message.
- 2.10 The Licensee may not exercise any of the rights granted in the Licence for Commercial Use. In the event that the Licensee wishes to exploit any Work for any Commercial Use a separate licence must be obtained.

3. Reproduction by Third Parties

The Licensee agrees and undertakes to DACS that, if the Licensee engages the services of a Services Provider, the Licensee shall use its best endeavours to ensure that such Services Provider observes all of the restrictions set out in this Agreement applicable to the protection of the Works and all rights in the Works.

4. Protection of Rights

- 4.1 The Licensee shall ensure that no exercise of the Licensed Acts shall facilitate or encourage reproduction by unlicensed third parties of a Work alone and out of context.
- 4.2 As set out in the Term Sheet, the Licensee may only reproduce the Works on any Open Media in a low resolution format. The Licensee may reproduce the Works on any Closed Media in high resolution format.

5. Payments

Set Up Fee

- 5.1 The Licensee shall pay to DACS the Set Up Fee within 30 days from the date of invoice, unless agreed otherwise with DACS in writing. The Set Up Fee is non-returnable, but recoupable against Royalties.

Royalties

- 5.2 The Royalties shall be based on the number of Works reproduced in any of the Permitted Media at any time during the Royalty Period. For the avoidance of doubt, a Work that is reproduced more than once or in more than one of the Permitted Media shall only attract one Royalty payment per Royalty Period.
- 5.3 The Licensee may recoup the Set Up Fee from Royalties due to DACS, but may not make any further deductions whatsoever from the amounts due to DACS.
- 5.4 Within 30 days of the end of each Royalty Period (and within 30 days after the date of termination or expiry of this Licence) the Licensee shall provide a statement to DACS setting out the total number of Works reproduced in any of the Permitted Media during the Royalty Period, and, in respect of each Work so reproduced, the name of the Artist and the title of the Work.
- 5.5 Upon receipt of the royalty statement set out above, DACS shall issue an invoice for any sums set out as due, and the Licensee shall make payment of the same within 30 days of receipt of such invoice.

- 5.6 All payments shall be remitted by the Licensee in GB pounds sterling payable 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.
- 5.7 All sums payable hereunder by the Licensee are exclusive of VAT applicable from time to time, which shall, where appropriate, be payable by the Licensee in addition to the Set Up Fee / Royalties.
- 5.8 The Licensee agrees to keep during and for a period of three years full, complete and accurate records of the Works reproduced in any of the Permitted Media, such records being at all times sufficient to establish and follow through an audit trail.
- 5.9 DACS and/or its duly authorised representatives shall have the right during normal business hours upon not less than seven days' prior written notice to enter the Licensee's premises and audit and inspect and to make copies of the books, records, accounts and other documents of the Licensee relating to the reproduction of the Works. Where any audit discloses a discrepancy in the sums payable to DACS to the detriment of DACS, the Licensee shall (without prejudice to any other right or remedy of DACS or the Artist or Owner) immediately pay such discrepancy, together with interest on such discrepancy, from the date on which it should have been paid until the date on which it is actually paid calculated at an annual rate in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.10 The fees incurred by DACS in auditing the Licensee under this Agreement shall be borne by DACS unless any audit discloses a discrepancy in the sums payable to DACS to the detriment of DACS, the Artist or the Owner which amounts to five per cent or more of the total amount payable to DACS in respect of any Royalty Period which is the subject of the audit, whereupon the Licensee shall in addition promptly on demand pay to DACS all the costs of such audit.
- 5.11 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.
- 5.12 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.
- 5.13 Acceptance by DACS of any sums 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 next to each copy of a Work with reasonable prominence. By way of illustration, the inclusion of the Credit either adjacent to each licensed reproduction of the Work shall constitute reasonable prominence.

7. Warranties and Representations

- 7.1 The Licensee warrants and represents to DACS that:

- (i) it has full right and title to enter into this Agreement;
- (ii) its use of the Work shall not reflect adversely on the image, goodwill or reputation of DACS or the Artist or Owner;
- (iii) it will not assert or represent to any person that it has any right, title or interest in the Work or any part of the Work other than the rights expressly granted under this Agreement;
- (iv) it will not include 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;
- (v) it will not include any Work in a promotional or sponsorship message for the Licensee or any third party;
- (vi) it will not alter or adapt any Work or do any act which may infringe the moral rights of the Artist;
- (vii) it will not reproduce any Work or adapt any Work in the form of a parody or burlesque of any Work or the Artist;
- (vii) it shall use its best endeavours to ensure that the colour of the copies of Work made available pursuant to this Licence matches the colour of the original Work;
- (viii) it shall refrain from initiating any direct contact with the Artist or Owner in order to obtain waivers or separate agreements with respect to the copyright in the Work outside of this Agreement;
- (ix) it will not at any time do or suffer to be done any act which will in any way impair or affect the copyright in the Work;
- (x) 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.

7.2 The Licensee hereby indemnifies and agrees to indemnify and save and hold the Artist, Owner and DACS harmless and to keep the Artist, Owner 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, Owner 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 breach or 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, Owner or DACS by reason of the exercise of the rights granted in this Agreement, except insofar as such claims arise from any breach of this Agreement by DACS.

7.3 DACS warrants and represents to the Licensee that it has been granted the right to enter into this Agreement by the Artist or Owner. DACS gives no warranties, representations or undertakings in respect of the Work, save that DACS, as agent for the Artist / Owner, warrants that, to the best of its knowledge and belief, the Artist / Owner owns and/or controls all right, title and interest in the copyright in the Work, unless otherwise set out on the Term Sheet.

7.4 DACS hereby 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 or failing to perform or which arise out of any breach or non-performance by DACS of any of the warranties in clause 7.3.

8. Limitation of Liability

8.1 Nothing in this Agreement shall operate to exclude or limit DACS' liability for:

- (i) death or personal injury caused by its negligence; or

- (ii) 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
- (iii) fraud; or
- (iv) any other liability which cannot be excluded or limited under applicable law.

- 8.2 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.
- 8.3 Save as set out in clause 8.1, DACS' total liability under this Agreement shall be limited to the amount of the monies actually received by DACS from the Licensee pursuant this Agreement.

9. **Infringement**

Claims Against Third Parties

- 9.1 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, or the Owner's rights in the Work.
- 9.2 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 Licensee's rights in the Organisation's Website).
- 9.3 The Licensee will, at the 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

- 9.4 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.
- 9.5 If any third party makes a Qualifying Claim, or notifies an intention to make a Qualifying Claim, against the Licensee, the Licensee shall:
- (i) immediately give written notice of the Qualifying Claim specifying the nature of the Qualifying Claim in detail;
 - (ii) not make any admission of liability, agreement or compromise in relation to the Qualifying Claim without the prior written consent of DACS;
 - (iii) 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;
 - (iv) 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
 - (v) at DACS' cost take such action as DACS may reasonably request to avoid, dispute, compromise or defend the Qualifying Claim.
- 9.6 Subject to the Licensee's full compliance with Clause 9.5, 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.

10. Term and Termination

- 10.1 This Agreement shall commence on the date set out on the Term Sheet and shall continue until terminated by either party on three months written notice to the other, or as set out in clause 10.2 ("**Term**").
- 10.2 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 Credits).
- 10.3 Upon termination of this Agreement all rights and licences granted in this Agreement shall cease and the Licensee shall immediately remove any copies of the Works from the Organisation's Website or any other Permitted Media.
- 10.4 Any expiry or termination of this Agreement shall not terminate any obligation or right which is expressed to arise on or continue after expiry or termination.

11. 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.

12. Notices

- 12.1 A notice given under this Agreement:

- (i) shall be sent (in the case of DACS for the attention of "Director of Service") 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
- (ii) shall be:
 - (A) delivered personally; or
 - (B) sent by fax; or
 - (C) sent by pre-paid first class post, recorded delivery or registered post; or
 - (D) (if the notice is to be served by post outside the country from which it is sent) sent by registered international courier.

- 12.2 A notice is deemed to have been received:

- (i) if delivered personally, at the time of delivery; or
- (ii) in the case of fax, at the time of transmission; or
- (iii) in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or

- (iv) in the case of registered international courier, five days from the date of posting; or
- (v) 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.

12.3 To prove service, it is sufficient to prove that the notice was transmitted by fax to the correct fax number of the relevant party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

13. Assignment and Licence

The Licensee shall not be entitled to assign this Agreement nor grant any licence or sub-licence of the rights granted pursuant to it, save as expressly set out in the Term Sheet or in clause 3.

14. Third Party Rights

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

15. Variation and Waiver

- 15.1 A variation of this Agreement shall be in writing and signed by or on behalf of both parties.
- 15.2 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.
- 15.3 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

16. Further Assurance

Each party hereto agrees upon request of any other party hereto 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.

17. Severance

- 17.1 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.
- 17.2 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.

18. Entire Agreement

The Term Sheet and these Terms and Conditions embody all the terms agreed between the parties relating to the inclusion of copies of the Work in any of the Permitted Media and no oral representations, statements, inducements, warranties or promises by either party shall be binding and valid.

19. Governing Law and Jurisdiction

- 19.1 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.
- 19.2 The parties irrevocably agree that the courts of England have 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).

20. 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.