

DACS Promotional Materials Licence Terms and Conditions 2014

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 sale of the Licensed Product, such notice being available to the public without a charge of any kind being imposed to view it;

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

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

"Artist" means the Artist as set out on the Term Sheet;

"Cache" means to store information in an area of computer memory designated to the high-speed retrieval of frequently used or requested data;

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

"Cover" means the front Cover, back Cover or spine of the Licensed Product;

"Credit" means the Credit as set out on the Term Sheet;

"Digital Copy" means a digital copy of the Licensed Product contained in readable format, such as 'portable document format' (pdf), whereby the end user cannot alter or amend the contents of the electronic document published in that format;

"Download" means the retrieval and transfer of data from a remote computer using the Internet (or other network) to a User Device's random access memory or for permanent storage on a hard disk, but, for the avoidance of doubt, "Download" does not include temporary or Cached copies automatically made by User Devices;

"DRM" means the security and other measures for digital rights management, being such effective RMI and TPM as are standard in the digital publishing industry in the UK from time to time;

"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);

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

"Hard Copy" means a physical printed copy of the Licensed Product;

"Host" means to store and manage pages of text, images or other information on the web or a local area network ("**LAN**") and provide any associated scripts, databases and software so that the pages are accessible to others via the Internet or the relevant LAN;

"Internet" means the global communications system of computer networks accessible by the public which interconnect, either directly or indirectly, individual computers and/or networks and which enables users to engage in two-way transmissions of data over such networks in order to transmit and receive content;

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

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

"Licensed Acts" means the right to:

(a) copy the Work only as necessary for inclusion in the Licensed Product;

- (b) include such copies of the Work in the Licensed Product;
- (c) if set out in the Term Sheet, issue Hard Copies of the Licensed Product to the public;
- (d) if set out in the Term Sheet, make Digital Copies of the Licensed Product in the format set out in the Term Sheet available to the public, and to communicate such Digital Copies to the public in accordance with the Permitted Usage,

but not the right to alter or adapt the Work;

“Licensed Product” means the Product on which the whole or any part of the Work has been reproduced under this Agreement;

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

“Permitted Usage” means the Permitted Usage 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 third party;

“RMI” means rights management information, being any information provided by the Owner or the holder of any right under copyright which identifies the Work, the Artist, the Owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the Work, and any numbers or codes that represent such information;

“Sales Tax” means any sales or other taxes (other than 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;

“Samples” means the Samples in the number set out in the Term Sheet;

“Service Provider” means any person, firm or company which carries out the storage, reproduction or delivery of the Digital Publication on behalf of the Licensee;

“Term” means the Term as set out in the Term Sheet;

“Term Sheet” means the DACS Licensed Product Licence Term Sheet signed on behalf of DACS and the Licensee setting out the principle terms of this Agreement;

“Territory” means the Territory as set out in the Term Sheet;

“Third Party Manufacturer” means any person, firm or company which carries out the reproduction of Work and/or prints the Licensed Product on behalf of the Licensee;

“TPM” means technological protection measures, being any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work;

“User” means the ultimate User of the Digital Publication;

“User Device” means any device that may be used to access and view a Digital Copy of the Licensed Product;

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

“Web” means a network of interlinked documents and resources residing on the Internet that use hypertext protocols and language, which are available for display using browser software;

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

“Zip” means the method used to reduce the storage capacity required by a file so making it quicker to send over the Internet.

- 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 or Owner 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 conditional upon the Licensee’s continued compliance with such terms and conditions, and in consideration 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**

- 3.1 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 14.

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 expressly granted to the Licensee under this Agreement are expressly reserved to DACS or 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 of the Work other than the rights expressly granted under this Agreement.

Separate Licence Required for Promotional Use

- 4.3 The Licensee may not reproduce, whether in whole or in part, the Work (or any part of it) in any promotional or sponsorship message. A separate licence is required for any such use.

No Alterations to Work

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 publishing process or the digital copying, storage or delivery 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.

Restrictions on Use

- 4.5 The Licensee shall ensure that no Work is used in any context which the Licensee ought reasonably to consider as being likely to be insulting or offensive to the Artist or to a reasonable member of society.

Separate Licences Required

- 4.6 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 joint owner(s) whom DACS does not represent.
- 4.7 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 photograph of the Work; or
 - (b) any protected content whatsoever that may be included, featured or represented within the Work, including copyrights, trade marks, likenesses or image rights.

Number of Copies

- 4.8 Only one copy of each Work may be included in the Licensed Product, unless otherwise specified in the Term Sheet.

No Direct Contact With Artist

- 4.9 The Licensee agrees to refrain from initiating any direct contact with the Artist in order to obtain waivers or separate agreements with respect to the copyright in the Work outside this Agreement regarding the Licensed Publication.

Cover Use

- 4.10 The Licensee may not reproduce, whether in whole or in part, any or all of the Work on the Cover of any Licensed Product unless:
- (a) the Licensee secures approval in principle from DACS in writing; and then, if such approval in principle is granted;
 - (b) the Licensee shall, prior to publication of the Cover, submit a sample of the Cover to DACS so that DACS may obtain the relevant Artist / Owner's approval;

and the Cover reproducing a Work shall not be published unless and until DACS communicates in writing the relevant Artist's consent to the same and approval of the sample.

5. Rights of Approval

- 5.1 Prior to the initial printing of the Licensed Product or communication to the public, the Licensee shall, if so requested by DACS, provide for approval Samples of the intended use of the Work in the Licensed Product in the form stipulated by DACS (which may include digital layouts and printer's proofs). The Licensee shall not commence production of the Licensed Product until such approval is given in writing by DACS. After such Samples have been approved, the Licensee shall not depart from them in any material respect without the prior written consent of DACS.
- 5.2 No later than one month after the Licensed Product has been issued, the Licensee shall submit to DACS the number of Samples of each Licensed Product as set out in the Term Sheet. Thereafter, if the Licensee makes any permitted change to the content of the Licensed Product and DACS requests a sample, the Licensee shall submit such sample to DACS no later than one month after receipt of DACS' request.
- 5.3 The Licensee shall use its best endeavours to ensure that the colour of the copies of the Work matches the colour of the original Work.

6. Digital Copies

- 6.1 If the Term Sheet sets out that the Licensee may exercise the right to distribute Digital Copies of the Licensed Product, the following additional terms shall apply:
- (a) The Licensee may make Digital Copies of the Licensed Product available to the public and permit end users to print copies of the Licensed Product for their private use only.
 - (b) The resolution of the reproduction of any Work in any Digital Copy must not exceed 1024 x 768 pixels for resolution at 128 dots per inch for definition, unless agreed in writing by DACS upon approval of the relevant Artist.
 - (c) The Licensee shall, at its own cost, implement the DRM such that the Licensee uses its best endeavours to ensure that:
 - (i) the Work is used within the scope of the rights granted to the Licensee; and
 - (ii) save for temporary copies automatically made by User Devices, or as permitted by law, Users are not able to copy the Work, save that Users may print copies of the Licensed Product for their private use only;
 - (iii) Users are not able to communicate the Work to the public, or in any way exploit the Work other than as expressly allowed by this Agreement.
 - (iv) Users are not able to remove, bypass, circumvent, neutralise, or modify any of the DRM.
- 6.2 The Licensee shall ensure that all copies of the Work are kept secure and in an encrypted form, and shall use the best available practices and systems applicable to the use of the Work to enforce the restrictions of this Agreement.
- 6.3 The Licensee shall ensure that the terms and conditions of use of any website where the Licensed Product is available to Download shall include:
- (a) a requirement to comply with all applicable laws in respect of the Users' use of the website;
 - (b) prohibition of any reproduction or communication of the Licensed Product and / or the Work to the public that violates applicable law or the rights of third parties;
 - (c) a reservation of all intellectual property rights and other rights in the Licensed Product; and
 - (d) a provision that the end user is authorised to use the Licensed Product only for personal, non-commercial use, and not for redistribution, transfer, assignment or sub-licence.
- 6.4 If the Term Sheet does not expressly set out that the Licensee may exploit Digital Copies, then this Licence only includes the right to create and distribute Hard Copies of the Licensed Product.

7. Manufacture/Reproduction by Third Parties

The Licensee agrees and undertakes to DACS that, if it wishes to have a Licensed Product or any component, element or part thereof which features the Work, printed, stored or reproduced by a Third Party Manufacturer, it shall use its best endeavours to ensure that the Third Party Manufacturer observes all of the restrictions set out in this Agreement applicable to the protection of the Work and all rights therein.

8. Credits

The Licensee shall ensure that the Credit appears on each copy of the Licensed Product featuring a reproduction of a Work with reasonable prominence. By way of illustration, the inclusion of the Credit adjacent to the licensed reproduction of the Work or any of them shall constitute reasonable prominence.

9. Licence Fee

- 9.1 The Licensee shall pay to DACS the applicable Licence Fee set out in the Term Sheet.
- 9.2 All payments shall be remitted by the Licensee in GBP (sterling) payable to the bank account nominated by DACS. All currency exchange fees, remittance fees or other charges connected with payments by the Licensee under this Agreement shall be borne by the Licensee and shall not be deducted from the amount due to DACS.
- 9.3 All sums payable by the Licensee are net of VAT and/or any other Sales Tax, which shall, where appropriate, be payable by the Licensee in addition to the Licence Fee.
- 9.4 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 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.

- 9.5 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 by the due date, DACS shall exercise its statutory right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.6 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 acceptance shall have taken place.

10. Reporting and Auditing

- 10.1 The Licensee shall, on written request, give to DACS any information as to its use of the Licenced Products which DACS may reasonably require.
- 10.2 The Licensee shall, at DACS' request, report to DACS within 30 days of the end of the calendar year the number of Licensed Products it has produced or caused to be produced in the preceding calendar year and the Agreed Format in which each of those Licensed Products was produced.
- 10.3 The Licensee agrees to keep during, and for a period of two calendar years following the end of, the Term full complete and accurate records of all manufacture, sale and supply of the Licensed Products and of all uses made of the Work, such records being at all times sufficient to establish and follow through an audit trail.
- 10.4 On written request by DACS, the Licensee will provide, within 30 days of such a request, a statement from independent auditors (to be appointed by DACS) certifying the first publication date and number of copies of the Licensed Products that the Licensee has produced (or which have been produced under a third party's imprint) during the Term to enable DACS to verify that the appropriate Licence Fee has been paid. Where the certified statement discloses a discrepancy in the sum payable to DACS to the detriment of DACS, the Licensee shall (without prejudice to any other right or remedy of DACS) forthwith 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.

10.5 The cost of obtaining the certified statement shall be borne by DACS unless the statement discloses an underpayment of 10% or more, in which event the Licensee shall bear such cost.

11. Warranties and Representations

11.1 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 any Work in a promotional or sponsorship message for the Licensee or any third party;
- (e) it will not alter or adapt any Work or do any act which may infringe the moral rights of the Artist, unless expressly set out herein or as expressly agreed in writing by the Artist;
- (f) each and every one of the Licensed Products, including the packaging, labels, containers, advertisements and/or related material (if any) shall contain the Credit;
- (g) 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;
- (h) it will co-operate fully and in good faith with DACS and / or the Artist for the purpose of securing or preserving their rights in and to the Work; and
- (i) no exploitation of the Licensed Product in hard copy, digital copy, or online shall allow, facilitate or encourage copying or reproduction by unlicensed third parties of a Work alone and out of context.

11.2 The Licensee hereby 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 any of the warranties in Clause 11.1 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.

11.3 DACS warrants and represents to the Licensee that it has been granted the right to enter into this Agreement by the Artist. DACS warrants that, 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. Save as set out in this clause, DACS gives no warranties, representations or undertakings in respect of the Work.

11.4 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 any of the warranties in Clause 11.3.

12. Infringement

Claims Against Third Parties

- 12.1 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.
- 12.2 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 own intellectual property rights).
- 12.3 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

- 12.4 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.
- 12.5 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.
- 12.6 Subject to the Licensee's full compliance with Clause 12.5, 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.

13. Limitation of Liability

- 13.1 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.

- 13.2 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.
- 13.3 Save as set out in Clauses 12.6 and 13.1, DACS' total liability under this Agreement shall be limited to the amount of the Licence Fee actually received by DACS.

14. 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).

15. Provisions After Termination

- 15.1 Upon termination of this Agreement, save as set out below, all rights and licences granted in this Agreement shall cease and the Licensee shall immediately discontinue all manufacture or publication of the Licensed Product incorporating any Work licensed under this Agreement.
- 15.2 If expressly set out in the Term Sheet, the Licensee may retain a copy of the Licensed Product on the Licensee's website following termination of this Agreement, and, in such event, the terms of this Agreement shall continue to govern such use.
- 15.3 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.

16. 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.

17. Notices

- 17.1 A notice given under this Agreement:
- (a) shall be sent (in the case of DACS for the attention of [TBD]) 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 fax; or
 - (iii) sent by pre-paid first class post, recorded delivery or registered post; or
 - (iv) (if the notice is to be served by post outside the country from which it is sent) sent by registered air mail.

- 17.2 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery; or
- (b) in the case of fax, at the time of transmission; or
- (c) in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
- (d) in the case of registered air mail, five days from the date of posting; or
- (e) 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.

17.3 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.

18. Assignment and License

18.1 The grant of rights set out in this Agreement is non-transferable and personal to the Licensee and the Licensee shall not be entitled to grant any licence or sub-licence thereof unless DACS gives its written consent to the sub-licence, the terms thereof and the sub-licensee (such consent not to be unreasonably withheld) whereupon a sub-licence fee shall be payable by the Licensee.

18.2 No party hereto may assign the benefit or burden of this Agreement without the prior written consent of the other parties.

19. Third Party Rights

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

20. Variation and Waiver

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

20.2 Any 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.

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

21. 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.

22. Severance

22.1 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.

22.2 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.

23. 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 written agreement signed by both parties.

24. Governing Law and Jurisdiction

- 24.1 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.
- 24.2 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).

25. 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.