



ARTIMAGE AND COPYRIGHT LICENCE

TERMS AND CONDITIONS

SEPTEMBER 2019

1. Definitions and Interpretation

- 1.1 In this Agreement capitalised terms shall have the meanings ascribed to them in **bold** 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;

Artimage means DACS's image library at the URL www.artimage.org.uk;

Artwork means the Artwork set out in the Term Sheet;

Associate shall have the same meaning as defined in Section 435 of the Insolvency Act 1986;

Broadcaster's Catch-up VoD means a programme service by which programmes are digitally encoded and are made available to the public by the broadcaster of the programme for a defined period following broadcast by Standard Television or Non-Standard Television, and, if ordered by the consumer, transmitted electronically from the broadcaster's server for reception direct to devices enabled to receive the broadcast without a permanent copy of the programme being made;

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

Cover means:

- (a) for a Book, Brochure or Catalogue: the front cover, back cover, dust cover and/or the spine of a print copy and the front cover/page of a digital copy;
- (b) for a Newspaper (but not a magazine or Pull Out): the front page or the Masthead, and, if digital rights are granted, the home page of the website;
- (c) a magazine: the front cover and/or back cover, and, if digital rights are granted, the home page of the website;
- (d) for a Pull Out: on the front cover, back cover, and the spine of any Pull Out, or, where there is no cover, the first page of such Pull Out;

but not on a poster, postcard or equivalent included in or accompanying the Licensed Product;

Derivative Work means any copyright work produced directly or indirectly pursuant to the Licensed Rights based on or incorporating the whole or any part of the Image or Artwork, including altered or adapted versions of the Image or Artwork produced in order to enable the Image or Artwork to be reproduced on or in the Licensed Product;

Digital File 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 drive, 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;

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;

Image means the photographic image set out in the Term Sheet, or any transparencies, digital format images, negatives, prints, footage or other representations of the Image;

Image ID means the reference number set out in the Term Sheet identifying the relevant Image on Artimage;

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;

Licensed Product means the Brochure, Catalogue, Book, Digital Platform, Film, Merchandise, Monograph, Newspaper, Magazine, Social Network Service, TV Programme or Website set out in the Term Sheet, as applicable;

Masthead means a banner communicating the contents of the Licensed Product and/or any banner carrying the title of the Licensed Product printed on the Cover;

Monograph means a publication in the Format about a single artist and the work of that artist, although the publication may feature the work of other artists by way of reference or comparison;

Net Sale Price means the amount received by or on behalf of the Licensee or its Associates in respect of the sale of each Licensed Product and the rights granted in this Agreement after deducting withholding taxes, local taxes and bank fees for the transfer of funds only;

Non-Standard Television means a programme service:

- (a) broadcast by means of satellite and/or microwave and/or digital terrestrial technology, or
- (b) transmitted by means of a telecommunications network system, whether cable, wireless or via a telephone line (including streaming or temporary downloading via the Internet), including services commonly referred to as pay cable, basic cable, satellite, pay per view, near Video on Demand, and including IPTV (Internet protocol television), and DVB-H (digital video broadcasting - handheld), but excluding Standard Television;

Non-Theatric means the exhibition of a programme or film, whether by means of closed circuit television or otherwise, to any private audience of non-fee-paying viewers or any private audience of fee-paying viewers in circumstances where any fee which is paid by all or any such viewers is not paid primarily or principally for the purpose of viewing such programme or film;

Owner means either or both, depending on the context, of:

- (a) the owner of the copyright in the Artwork, if different from the Artist; and
- (b) the owner of the copyright in the Image;

Premiums means Licensed Products sold or given away to the public as part of arrangements to promote another product or service;

Pull Out means any separate section of a newspaper or magazine which can be removed from the main body (by way of illustration, such as accompanying inserts, etc, but not different sections, such as a travel, sports or motoring section);

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

Renewal Fee means the administration fee payable by the Licensee to DACS in order to extend the Term, which shall be calculated in accordance with DACS' published tariff of licence fees applicable as of the date of renewal;

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

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;

Standard Television means a programme service broadcast over analogue terrestrial transmitters, together with a simulcast, if required, by means of satellite and/or microwave and/or digital terrestrial technology whether analogue or digital, for reception on a television receiver in the home without a charge being made to the viewer for the privilege of viewing such programme or the service on which the programme is broadcast or simulcast, or for which only a nominal governmental tax is levied; for the avoidance of doubt, any form of primary transmission or broadcast by means of satellite and/or microwave and/or digital terrestrial technology, whether analogue or digital, other than as a simulcast, would constitute Non-Standard Television and is thereby excluded from Standard Television;

Term Sheet means the Artimage and Copyright Licence Term Sheet signed on behalf of DACS and the Licensee setting out the principal terms of this Agreement;

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 end user of the Licensed Product;

User Device means any device that may be used by Users to Download and/or store a 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. References to **including** and **include** mean respectively including without limitation and include without limitation.

Videogram and DTO means:

- (a) the making, selling (including selling for use in promotional giveaways, covermounts and partworks), renting and lending of copies of a programme or film in the form of physical devices capable of storing information (including VHS cassettes, laser discs, Video CDs, DVDs, UMDs, Blu-Ray and DVCs) designed to be used in conjunction with reproductive apparatus and intended for private use now in existence or developed in the future; and
- (b) digitally encoding programmes and making them available to the public, and, if ordered by the consumer, transmitting them from the service operator's video server for reception by appropriate television or other device through use of a decoding device for private use;

Video on Demand means a service by which programmes are digitally encoded and are made available to the public, and, if ordered by the consumer, transmitted electronically from the service operator's video server for reception direct to devices enabled to receive the broadcast through use of a decoding device with no permanent copy of the programme being made by the consumer or a central server on behalf of the consumer (for the purposes of this definition only "permanent" shall mean no longer than 30 days);

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 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 reference to **Artist** shall mean Artist and/or the owner of the copyright in the Artwork, as applicable.
- 1.6 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.
- 1.7 Words in the singular include the plural, and those in the plural include the singular.
- 1.8 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.
- 1.9 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.
- 1.10 The terms below shall apply to all Term Sheets, unless set out in *italics* as applying only to certain types of Licensed Product.

2. Grant of Rights

- 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 Licence Fee, DACS grants to the Licensee a non-exclusive licence to perform the Licensed Rights during the Term in the Territory in accordance with any other restrictions set out in the Term Sheet.
- 2.2 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 and/or the Artist/Owner, as applicable. The Licensee shall not assert or represent to any person that it has any right, title or interest in the Image or Artwork or any part of the Image or Artwork other than the rights expressly granted under this Agreement.

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 18.

4. Restrictions

Ownership

- 4.1 Title to, and ownership of, all copyright in the Image and Artwork shall remain with DACS or the Artist/Owner, as applicable.

No Alterations

- 4.2 The Licence does not include the right to alter or adapt the Image or Artwork, other than to copy the Image and Artwork into a different format in accordance with exigencies of the publishing or digital distribution process, as applicable, or as otherwise agreed in writing with DACS.

- 4.3 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

- 4.4 Unless otherwise set out in the Term Sheet, the Licensee shall not use the Image or Artwork or part of the Image or Artwork in such a way as to imply approval or endorsement of the Licensee or any third party, or in any promotional message, save that:

- (a) where the Term Sheet sets out that the Licensee is permitted to reproduce an Image or Artwork on the Cover, the Licensee may include a reproduction of the Cover in an Advertisement for the Licensed Product or on the Licensee's website and in the Licensee's trade catalogue;
- (b) where the Licensed Product is a Book or Monograph, the Licensee may include a photograph of a page spread from the Licensed Product reproducing the Image and Artwork on the Licensee's website, or social network service and in the Licensee's trade catalogue; and
- (c) where the Licensed Product is a Brochure or Catalogue, the Licensee may copy or issue copies to the public in the UK for the purpose of advertising the sale of the relevant Artwork.

No Direct Contact with Artist

- 4.5 The Licensee agrees to refrain from initiating any direct contact with the Artist or the Owner in order to obtain waivers or separate agreements with respect to the copyright in the Image or Artwork outside this Agreement regarding the Licensed Product.

Number of Copies

- 4.6 Only one copy of each Image/Artwork may be reproduced in the Licensed Product, unless otherwise indicated in the Term Sheet.

Maximum Resolution

- 4.7 If the Licensed Product is a Website or Social Network Service, or the Term Sheet specifies that Online rights are granted, the resolution of the reproduction of any Image or Artwork must not exceed 800 x 1000 pixels for resolution at 150 dots per inch for definition, unless agreed in writing by DACS upon approval of the relevant Artist.

Restrictions on Use

- 4.8 The Licensee shall ensure that no Image or Artwork 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

- 4.9 Where there are joint owners of the copyright in an Image or Artwork and DACS does not represent all of the parties owning or controlling the rights in such Image or Artwork, the Licence is not a licence for the rights owned or controlled by the joint owner(s) whom DACS does not represent.
- 4.10 The Licence relates only to the copyright in the Image and Artwork themselves. It does not include a grant of rights in, and DACS gives no representation or warranty in respect of any protected content whatsoever that may be included, featured or represented within the Image or Artwork, including copyrights, trademarks, likenesses or image rights.

Cover Use

- 4.11 The Licensee may not reproduce, whether in whole or in part, any or all of the Image or Artwork on the Cover of any Licensed Product unless:
- (a) expressly set out in the Term Sheet; or
 - (b) the Licensee secures approval in principle from DACS in writing;
and then, if such approval in principle is granted;
 - (c) the Licensee shall, prior to publication of the Cover, submit a sample of the Cover to DACS so that DACS may seek to obtain the relevant Artist's approval,

and the Cover reproducing an Image or Artwork 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. Delivery of Image

- 5.1 A low resolution watermarked copy of the Image will be made available for the Licensee to download from the Artimage website. Alternatively the Licensee may download a low-resolution watermarked copy of the Image via a unique link created by the Artimage image-management system sent to the Licensee. The Licensee shall be entitled to use such copy only for internal evaluation purposes and for producing draft or pre-production versions of the Licensed Products for approval, if required pursuant to this Agreement, as applicable.
- 5.2 Once the Licensee has provided DACS with written evidence that either (a) it has secured all necessary approvals required pursuant to this Agreement or (b) no approvals are required, DACS shall provide the Licensee with a unique link generated by the Artimage image-management system which will enable the Licensee to download the copy of the Image in the Licensed Resolution within one week of the link being generated.
- 5.3 The Licensee shall use all reasonable care in storing the Licensed Resolution copy of the Image in order to prevent any unauthorised duplication or reproduction of the same.
- 5.4 The Licensee will examine the Licensed Resolution copy of the Image for possible defects (whether digital or otherwise) before sending the same for publication or reproduction. In the event there are any defects in the Image, the Licensee shall notify DACS in writing and shall refrain from using such defective Image, and DACS shall provide the Licensee with a further copy of the Image with the defect rectified, or (at its sole discretion) refund any Licence Fee paid by the Licensee and terminate this Agreement without further liability.
- 5.5 Following the Licensee's use of the Image in accordance with this Agreement, the Licensee shall delete all copies of the Image from its servers. For the avoidance of doubt, this Agreement does not transfer any title or ownership as to the property in the Image onto the Licensee.

6. Digital Rights Management

- 6.1 If the Licensee is granted any right to reproduce the Image/Artwork in digital form or the Term Sheet specifies that Online rights have been granted, this Clause 6 shall apply.
- 6.2 The Licensee shall, at its own cost, implement the DRM in all digital copies of the Licensed Product such that the Licensee uses its best endeavours to ensure that:
- (a) the Image and Artwork is used within the scope of the rights granted to the Licensee and to Users; and
 - (b) save for Users' private use, including the making of 'back up' copies, or as permitted by law, Users are not able to copy the Image or Artwork;

- (c) Users are not able to communicate the Image or Artwork to the public, or in any way exploit the Image or Artwork other than as expressly allowed by this Agreement;
 - (d) Users are not able to remove, bypass, circumvent, neutralise, or modify any of the DRM.
- 6.3 The Licensee shall ensure that the Image and Artwork are kept secure and in an encrypted form, and shall use the best available practices and systems applicable to the use of the Image and Artwork to enforce the restrictions of this Agreement.

7. Downloads

- 7.1 If the Licensee is granted any right to allow Users to Download a digital copy of the Licensed Product, this Clause 7 shall apply.
- 7.2 Before the Licensee allows any User to Download a digital copy of the Licensed Product, the Licensee shall ensure that each User agrees to terms and conditions of use of the Licensed Product that:
- (i) require them to comply with all applicable laws in using the Licensed Product;
 - (ii) state that the Licensed Product being supplied is only for the User's personal use and shall not be sold or lent to third parties;
 - (iii) prohibit reproduction or communication of the Licensed Product and / or the Image/Artwork to the public that violates applicable law or the rights of third parties; and
 - (iv) contain a reservation of all intellectual property rights and other rights in the Licensed Product.

8. Merchandise: Services by Third Parties

- 8.1 If the Licensed Product is Merchandise this Clause 8 shall apply.
- 8.2 The Licensee shall permit and shall use its best endeavours to obtain permission for DACS at all reasonable times and on reasonable notice to enter any place used for the manufacture, storage or distribution of the Licensed Products to inspect the methods of manufacture, storage and distribution.
- 8.3 The Licensee shall, in exercising its rights under this Agreement, comply with, and shall ensure that all Licensed Products sold or otherwise distributed by the Licensee, and all advertising and promotional materials relating to the Licensed Products, comply with, all applicable laws, rules, regulations, industry standards, safety standards, and codes of practice.
- 8.4 The Licensee shall ensure that the Licensed Products are safe for the use for which they were intended.
- 8.5 The Licensee shall perform its obligations in connection with the manufacture, sale and distribution of the Licensed Products with all due skill, care and diligence including good industry practice.
- 8.6 The Licensee shall not, nor directly or indirectly assist any other person to use any child labour in the manufacture or distribution of the Licensed Products, and, where third parties are to manufacture or distribute those Licensed Products, the Licensee shall procure from those third parties written confirmation that they shall not use any child labour in the manufacture or distribution of the Licensed Products.

9. Social Media Networks

- 9.1 If the Licensed Product is a Social Network Service this Clause 9 shall apply.
- 9.2 It is the Licensee's responsibility to ensure that the rights in the Image and Artwork granted to the Social Network Service comply with the terms of this Agreement at the time of uploading the Work. If the Social Network Service subsequently changes its terms so they do not comply with the terms of this Agreement, the Licensee shall notify DACS and DACS may terminate the grant of rights in respect of the relevant Social Network Service only. Such termination shall not entitle the Licensee to any refund.
- 9.3 The Licensee shall ensure that the terms and condition of use of the Social Network Service shall prohibit reproduction or communication of the Image and Artwork to the public that violates applicable law or the rights of third parties.

10. Advances and Royalties

- 10.1 If an Advance and/or Royalties are set out as payable in the Term Sheet Clause 10 shall apply.
- 10.2 The Licensee shall pay to DACS the Advance, if applicable, within 30 days from the date of invoice, unless agreed otherwise with DACS in writing.

- 10.3 Subject to recouping the Advance from Royalties, the Licensee shall, following recoupment, pay to DACS the Royalties as set out below.
- 10.4 Within 28 days of the end of each Royalty Period (and within 28 days after the date of termination or expiry of this Agreement) and as long as the Licensee or any of its Associates receive any monies or other benefits arising from the exploitation of the Licence, the Licensee shall provide a statement to DACS setting out:
- (a) the number of copies of the Licensed Product sold during the relevant Royalty Period and the price of the same;
 - (b) if applicable, the number of copies of the Licensed Products printed or manufactured during the Royalty Period but not yet sold or distributed;
 - (c) the number of copies of the Licensed Product given away for publicity or review purposes;
 - (d) if applicable, the number of copies lost through damage or theft, destroyed, pulped or remaindered or for any other reason for which the Licensee considers no Royalty to be due; and
 - (e) any other particulars as DACS may reasonably require.
- 10.5 Upon receipt of the Royalty Statement, DACS shall issue an invoice for any sums set out as due, and the Licensee shall make payment of the same within ten days of receipt of such invoice.
- 10.6 The Royalties shall be based on the number of Licensed Products sold. The Licensee may not make any further deductions whatsoever, including provisions against uncollected or uncollectible amounts, costs, overhead, etc, from the Royalties due to DACS. However, The Licensee shall be entitled to give away no more than ten copies of the Licensed Product for the purposes of publicity and review, and no Royalty shall be payable on such copies given away.
- 10.7 The Licensee shall not give any more than ten Licensed Products away as Premiums without DACS' prior written approval.

11. Payment

- 11.1 All payments shall be remitted by the Licensee in GBP (sterling) payable to DACS by cheque or by bank transfer to a 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.
- 11.2 All sums payable by the Licensee are net of VAT and any other Sales Taxes, which shall, where appropriate, be payable by the Licensee in addition to the amount specified.
- 11.3 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.
- 11.4 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.
- 11.5 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.

12. Auditing and Reporting

- 12.1 If an Advance and/or Royalties are set out as payable in the Term Sheet Clause 12 shall apply.
- 12.2 The Licensee shall, on written request, give to DACS any information as to its use of the Licence which DACS may reasonably require.

- 12.3 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 sold in the preceding year and, if applicable, the Format of each of those Licensed Products sold.
- 12.4 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 Image and Artwork, such records being at all times sufficient to establish and follow through an audit trail.
- 12.5 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 Product that the Licensee has sold (or which have been printed 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.
- 12.6 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.

13. Credits

- 13.1 The Licensee shall ensure that the Credit appears on / in each copy of the Licensed Product with reasonable prominence. By way of illustration, the following shall constitute reasonable prominence:
- (a) for Books, Monographs, either adjacent to the Image/Artwork or in the acknowledgements page of the Licensed Product;
 - (b) for Brochures, Catalogues, Digital Platforms, Newspapers, Social Network Service and Websites adjacent to the Image/Artwork;
 - (c) for Merchandise, adjacent to the Image/Artwork or on the packaging; and
 - (d) for Films and TV Programmes in the end credits.
- 13.2 If the Term Sheet expressly provides for the right to include more than one copy of the Image and Artwork in the Licensed Product then, save as set out in Clause 13.1, each copy of the Image and Artwork in the Licensed Product shall include the credit.

14. Warranties and Representations

- 14.1 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 Image and Artwork shall not reflect adversely on the image, goodwill or reputation of DACS or the Artist;
 - (c) it will not reproduce any Image or Artwork 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 Image or Artwork in a promotional or sponsorship message for the Licensee or any third party;
 - (e) it will not alter or adapt any Image or Artwork 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 use its best endeavours to ensure that the colour of the Image and Artwork in or on the Licensed Product matches the colour of the original Image and Artwork;
 - (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 Image or Artwork;
 - (i) shall ensure that no exploitation of the Licensed Product shall facilitate or encourage reproduction by unlicensed third parties of an Image or Artwork alone and out of context;

- (j) by entering into this Agreement, it acknowledges that the Image and Artwork are each separate 'artistic works' as defined in section 4 of the Act;
- (k) it will be solely responsible for ensuring that the manufacture, marketing, distribution and sale of the Licensed Product does not infringe any intellectual property rights of any third party (save that the Licensee may rely on the warranties to title in respect of the Image and Artwork given by DACS below);
- (l) if it wishes to have a Licensed Product or any component, element or part which features the Image or and Artwork hosted, printed, manufactured or distributed by a third party, it shall ensure that each third party observes all of the restrictions set out in this Agreement applicable to the protection of the Image or Artwork; and
- (m) 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 Image and Artwork.

14.2 The Licensee indemnifies and agrees to indemnify and save and hold the Artist, the Owner and DACS harmless and to keep them at all times fully and completely indemnified of, against and from any claims, actions, proceedings, liability, loss, damage, costs and expenses which they 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 14.1 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.

14.3 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/Owner owns and/or controls all right, title and interest in the copyright in the Image and Artwork, unless otherwise advised in writing. Save as set out in this Clause, DACS gives no warranties, representations or undertakings in respect of the Image or Artwork.

14.4 Subject always to the Licensee's compliance with Clause 16, 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 14.3.

15. Copyright in Derivative Works Created by the Licensee

15.1 Notwithstanding that the Licensee is not permitted to adapt or alter the Image or Artwork, if any Derivative Works are created as part of the creative or manufacturing process in creating the Licensed Product, the Licensee:

- (a) acknowledges that all copyright and rights in the nature of copyright subsisting in any part of the world in any Derivative Works shall vest in the Artist; and, to the extent it does not automatically vest in the Artist,
- (b) hereby assigns to the Artist absolutely with full title guarantee the entire copyright and all other rights in the nature of copyright subsisting in the Derivative Works, and all other rights of whatever nature, whether now known or created in the future, to which the Licensee may be entitled by virtue of the laws in force in any part of the world in such Derivative Works, in each case for the whole term including any renewals, reversions, revivals and extensions;
- (c) shall ensure that any third party who creates, including in the course of or in preparation for manufacture of the Licensed Products, Derivative Works for the Licensee, such as consultants or freelance designers, assigns any copyright or other rights they may have in the Derivative Works to the Licensor on the terms set out above;
- (d) shall ensure that any moral rights in relation to the Derivative Works are unconditionally waived; and
- (e) shall, upon DACS' request, provide DACS with copies of all and any Derivative Works, in such format as DACS may reasonably request.

16. Infringement

Claims Against Third Parties

16.1 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 / Owner's rights in the Image or Artwork.

16.2 The Licensee agrees not to take any action against any third party who it believes has infringed the Image or Artwork 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).

16.3 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 Image or Artwork, including joining in proceedings (at DACS' cost). All recoveries in any such action, claim or proceedings shall belong to DACS.

Claims By Third Parties

- 16.4 If the Licensee becomes aware that its use of the Image or Artwork 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.
- 16.5 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 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;
 - (d) co-operate in good faith with DACS in relation to DACS' conduct or defence of any Qualifying Claim and give DACS and its professional advisers access at reasonable times (on reasonable prior notice) to any relevant documents, records and information within the power or control of the Licensee, so as to enable DACS and its professional advisers to examine them and take copies (at DACS' expense) for the purpose of assessing the Qualifying Claim; and
 - (e) at DACS' cost take such action as DACS may reasonably request to avoid, dispute, compromise or defend the Qualifying Claim.
- 16.6 Subject to the Licensee's full compliance with Clause 16.5, 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 Image or Artwork 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.

17. Limitation of Liability

- 17.1 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.
- 17.2 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.
- 17.3 Save as set out in Clauses 14.4 and 16.6, DACS' total liability under this Agreement shall be limited to the amount of the Licence Fee actually received by DACS.

18. Termination

- 18.1 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 Image or Artwork beyond the scope of the Licence, or (iii) any failure to accord the Credit.

19. Provisions After Termination

- 19.1 Upon termination of this Agreement:

- (a) all rights and licences granted in this Agreement shall cease and the Licensee shall immediately discontinue all manufacture, publication or distribution of the Licensed Product incorporating the Image or Artwork or remove the Image/Artwork from the Licensed Product, as applicable;
- (b) unless the Licensee is in breach of this Agreement, it may sell off any remaining physical stock of the Licensed Product, if applicable, and the provisions of this Agreement shall apply in respect of such sales for so long as the Licensee continues to receive monies from the sale of the Licensed Product.

19.2 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.

20. 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.

21. Notices

21.1 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.

21.2 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.

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

22. Assignment and License

22.1 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 where the Licensee:

- (a) sells or otherwise disposes to a third party its rights in the Licensed Product;
- (b) permits a third party to print and/or publish under its own imprint one or more of the Licensed Product;
- (c) sell or otherwise dispose to a third party of any part of its business which deals with or has dealt with the Licensed Product,

provided that the Licensee notifies DACS of the identity of such third party.

22.2 In the event of a sale, disposal or sub-licence as set out in Clause 22.1 above:

- (a) in the case of an assignment, DACS shall, at the Licensee's request, enter into a new agreement with the third party on identical terms to this Agreement and the Licensee shall procure that the third party enters into such an agreement;
- (b) in the case of a sub-licence, the Licensee shall:

- (i) enter into an agreement with the third party, such agreement to specify that the third party is subject to and must observe all of the restrictions set out in this Agreement;
- (ii) strictly enforce the sub-licence agreement against the third party;
- (iii) provide DACS with the business name, address and contact details of the third party.

23. Third Party Rights

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

24. Variation and Waiver

- 24.1 A variation of this Agreement shall be in writing and signed by or on behalf of both Parties.
- 24.2 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.
- 24.3 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

25. Further Assurance

- 25.1 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.

26. Severance

- 26.1 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.
- 26.2 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.

27. Entire Agreement

The Term Sheet and these Terms and Conditions embody all the terms agreed between the Parties relating to the use of the Image and Artwork and the Licensed Rights, 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.

28. Governing Law and Jurisdiction

- 28.1 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.
- 28.2 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.

29. Execution and Date

- 29.1 This Agreement may be executed in any number of counterparts, including by way of faxed or scanned emailed counterparts, and all counterparts shall together constitute one and the same Agreement.
- 29.2 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