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## **Design and Artists Copyright Society**

# **Artist's Resale Right Membership Agreement Terms and Conditions**

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**August 2018**

Established by artists for artists,  
DACCS is a not-for-profit visual artists'  
rights management organisation.

## Membership Agreement

### Artist's Resale Right Membership Agreement, Terms and Conditions

#### 1. Definitions and interpretation

1.1. In this Agreement capitalised terms shall have the meanings ascribed to them in the Artist's Resale Right Agreement Term Sheet or as set out below:

**"Administration Fee"** means the rate determined by the board of directors of DACS from time to time which is set out in the Distribution Policies;

**"Artist"** means the Artist as set out in the Artist's Resale Right Agreement Term Sheet;

**"Artistic Work"** has the meaning of a work given in regulation 4 of the Regulations;

**"Associated Society"** means a collecting society or rights administration society with which DACS has arrangements authorising each other to collect monies owed to their respective members in relation to, amongst other things, Resale Right.

**"Beneficiary"** means the person or charitable body set out on the Artist's Resale Right Term Sheet, if any, who has inherited (whether in whole or in part and whether directly as an heir of the Artist or his or her successors) the Resale Right;

**"Distribution Policies"** means the Distribution Policies in force from time to time which are available on DACS website at [www.dacs.org.uk](http://www.dacs.org.uk) or such other web address as DACS may choose from time to time.

**"Owner"** means the Artist or Beneficiary who is the owner of the Resale Right and a party to this Agreement;

**"Regulations"** means the Artist's Resale Right Regulations 2006 (as amended);

**"Resale Right"** has the meaning given in regulation 3 of the Regulations and relates to the Artistic Works created solely or jointly by the Artist;

**"Resale Royalty"** has the meaning given in regulation 3 of the Regulations.

1.2. References to "including" and "include" are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them;

1.3. The words "other" and "otherwise" are not to be construed as being limited by any words preceding them;

1.4. Words in the singular include the plural, and those in plural include the singular and any gender includes other genders;

1.5. References to "this Agreement" include this Agreement as amended or supplemented from time to time;

1.6. Clause 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.

1.7. Any expressions used but not defined in this Agreement, but which are defined in the Regulations shall have the meaning ascribed to them in the Regulations.

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## **Membership Agreement**

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#### **2. Collection of Resale Royalties**

- 2.1. DACS shall pay the Owner any Resale Royalties (less the Administration Fee) collected by it in accordance with its Distribution Policies.
- 2.2. DACS and the Owner agree and accept that the Associated Societies shall have freedom to determine and impose whatever commissions they consider necessary for administering the Resale Right in their territories. These commissions shall be deducted from any monies payable to DACS by the Associated Society.

#### **3 Qualifying National and Qualifying Body**

- 3.1. The Owner shall provide to DACS valid evidence of the Artist's nationality, such as a copy of a valid passport, within 30 days of a request being made by DACS.
- 3.2. Where the Owner is a charity, the Owner shall provide to DACS valid evidence of the charity's status as a qualifying body, as defined by regulation 7 of the Regulations, within 30 days of a request being made by DACS.

#### **4. Warranties and Indemnity**

- 4.1. The Owner warrants that:
- (a) the Owner has good right and full power to enter into this Agreement and is legally entitled to receive the Resale Royalties and shall provide evidence of entitlement if requested by DACS;
  - (b) the information provided on the Artist's Resale Right Agreement Term Sheet is accurate;
  - (c) the Artist is a national of the country stated on the Artist's Resale Right Agreement Term Sheet;
  - (d) any Beneficiary detailed on the Artist's Resale Right Agreement Term Sheet is a named beneficiary of the Resale Right, in the Artist's Will, in the Will of the Artist's successors or has otherwise inherited the right to receive the Resale Royalty after the Artist's death; and
  - (e) where the Owner is a charity, the charity is a qualifying body pursuant to regulation 7 of the Regulations.
- 4.2. The Owner shall and does hereby indemnify DACS from and against any claims, actions, proceedings, liability, loss, damage, costs and expenses of any kind directly or indirectly incurred by DACS in connection with any breach or non-performance by the Owner of any warranty, representation or undertaking set out in this Agreement.
- 4.3. In the event that the Owner is not legally entitled to receive any Resale Royalties paid to the Owner by DACS the Owner shall immediately return those Resale Royalties to DACS. This clause is in addition to the indemnity given by the Owner at clause 4.2.

#### **5. Entire Agreement**

The Agreement is comprised of the Artist's Resale Right Term Sheet and these Terms and Conditions. This Agreement embodies all the terms agreed between the parties relating to the Resale Right and no oral representations, statements, inducements, warranties or promises by either party shall be binding and valid.

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## **Membership Agreement**

### **Artist's Resale Right Membership Agreement, Terms and Conditions**

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#### **6. Term and Termination**

- 6.1. This Agreement shall remain in full force and effect until the expiry of not less than three (3) months' prior written notice given by either party to the other. Where the Owner gives notice to DACS, such notice shall be addressed to the Artist's Resale Right Manager at DACS and receipt of such notice shall be acknowledged by DACS in writing with 14 days of receipt.
- 6.2. The Owner agrees and accepts that, after termination of the Agreement, DACS shall be entitled to deduct the Administration Fee from any Resale Royalties collected by DACS which are paid to the Owner and relate to resales of Artistic Works which were completed during the term of the Agreement.
- 6.3. The Owner agrees and accepts that any ongoing acceptance of monies from DACS relating to Resale Royalties paid in accordance with DACS' Distribution Policies shall constitute continued acceptance of these Terms and Conditions.
- 6.4. On the death of the Owner (where the Owner is a person) this Agreement shall be binding on his or her successor and shall continue until:
- (a) the successor gives notice of termination pursuant to clause 6.1 above; or
  - (b) the period ending either on 31 December in the seventh year following the year in which the Owner's death occurred.

#### **7. Severance**

In the event of any term or provision of this Agreement being held for any reason to be invalid, unlawful or unenforceable this shall not affect the validity, legality or enforceability of any other term or provision of this Agreement or of the remainder of this Agreement as a whole.

#### **8. No Partnership**

Nothing herein contained shall be construed or deemed to constitute a partnership or joint venture between the parties hereto or to create any relationship of employer and employee between the parties hereto.

#### **9. Variation**

This Agreement may only be varied in writing signed by or on behalf of each of the parties.

#### **10. Further Assurance**

Each party agrees upon request of any 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.

#### **11. Limitation of Liability**

Nothing in this Agreement shall operate to limit or exclude any liability for fraud or fraudulent misrepresentation or any other liability which cannot legally be limited or excluded.

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### **Artist's Resale Right Membership Agreement, Terms and Conditions**

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12. **Governing Law and Jurisdiction**

This Agreement shall be construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

13. **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 Artist's Resale Right Term Sheet, or, if not specified, the date on which it is executed by the last party.