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Design and Artists Copyright Society

Artimage Membership Agreement Successor Members Terms and Conditions

August 2018

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

Membership Agreement: Successor Members

Artimage 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 Artimage Agreement Term Sheet or as set out below:

“Artist” has the meaning set out in the Artimage Agreement Term Sheet;

“Copyright” means the whole and entire copyright and all rights in the nature of copyright, (including lending, rental, reproduction, distribution and communication and making available to the public rights) throughout the world for the full term thereof including all renewals, extensions, revisions, revivals, restorations and reversions thereof whenever arising and including all vested and contingent and future rights of copyright and rights in the nature of copyright whether now or hereafter known and whether conferred or existing now or hereafter in any part of the world and also all rights to renew and extend such copyright and rights in the nature of copyright (whether such rights to renew or extend exist now or are hereafter created) and together with all rights of action (including the right to sue for past infringements) powers, and benefits belonging to or accrued to the foregoing or any of them or to any party to this Agreement in respect thereof;

“Industry Sectors” means the following industry sectors:

- (a) book publishing;
- (b) public museums and galleries and cultural organisations;
- (c) newspaper and magazine publishing;
- (d) image banks and picture libraries;
- (e) television and film;
- (f) live events;
- (g) merchandising;
- (h) auction houses and commercial galleries;
- (i) advertising, promotion and company communications;
- (j) universities, schools and colleges;
- (k) any other industry sector which may be decided upon by DACS from time to time;

“Image” has the meaning set out in the Artimage Agreement Term Sheet;

“Image Hire Client” means any person who deals with or uses or wishes to deal with or use any of the Works or any part of them in any form, manner or media whatsoever;

“Membership Agreement” has the meaning set out in the Artimage Agreement Term Sheet;

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"Quarter" means each three (3) month period commencing on any of the following dates of any year during the term of this Agreement:

- (a) 1 January;
- (b) 1 April;
- (c) 1 July; and
- (d) 1 October;

"Rights" means the rights set out in the Artimage Agreement Term Sheet in relation to the Works;

"Term" means the Term set out in the Artimage Agreement Term Sheet;

"Territory" means the Territory set out in the Artimage Agreement Term Sheet;

"Works" has the meaning set out in the Artimage Agreement Term Sheet.

- 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. 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. Words in the singular include the plural, and those in plural include the singular and any gender includes other genders;
- 1.6. References to "this Agreement" include this Agreement as amended or supplemented from time to time;
- 1.7. Clause and schedule headings shall not affect the interpretation of this Agreement. References to clause and schedules are, unless otherwise provided, references to the clauses and schedules of this Agreement.

2. Provision of the Images

The Successor shall provide DACS with a high resolution (i.e. no less than 2500 pixels on the shortest side resolution at 300 dots per inch for definition) electronic copy of any or all of the Images promptly upon receipt of a written request (including an email request) from DACS at no charge to DACS.

3. Grant of Rights

The Successor hereby grants to DACS by way of a non-exclusive licence (subject to the conditions set out below) throughout the world all Rights in:

- (a) all Images, any Copyright in which is owned by the Successor alone;

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- (b) all Images, any Copyright in which is owned by the Successor with others (to the extent of the Successor's ownership therein), whether created prior to or during the continuance of this Agreement and not already assigned or licensed exclusively to another party (all such prior assignments and licences of rights in the Images having been listed in the schedule to this Agreement); or which shall revert to the Successor during the continuance of this Agreement and appoints DACS as its sole agent in relation to such rights.

4. Use of the Images

- 4.1. DACS shall specify in any agreement with an Image Hire Client governing the supply of electronic copies of the Images for which an image hire fee is due that the Image Hire Client must include a credit in conjunction with any reproduction of the Images, the wording of which shall be specified by DACS. The credit should include a credit in relation to the Image(s) as well as a credit for the underlying Work(s) depicted in the relevant Image(s).
- 4.2. Where an Image Hire Client wishes to use the Images or any of them other than for the purpose of designing a product or service, DACS will not supply high resolution copies of the relevant Images to that Image Hire Client unless the Image Hire Client has entered into a licence agreement with DACS governing such use.
- 4.3. DACS has the right and the Successor agrees that DACS has the right to publish a tariff of image hire fees and expenses payable by Image Hire Clients for supply and use of copies of the Images and to vary that tariff from time to time and to charge Image Hire Clients for use of the Artist's Works in accordance with that published tariff. The Successor will not specify or demand an alternative image hire fee but agrees to abide by the tariff published by DACS, save that the Successor may request DACS in writing to waive the image hire fee payable by an Image Hire Client with whom the Successor has or wishes to have business dealings.
- 4.4. During the term of this Agreement, where the Successor has already granted DACS permission to grant a licence to an Image Hire Client and that licence has been granted by DACS, where that licence expires and the Image Hire Client wishes to renew the licence on similar terms, the Successor agrees that DACS may grant such further licence without seeking the Successor's further permission.
- 4.5. DACS shall have the right and shall use its reasonable endeavours to collect such monies as are due to the Successor from any Image Hire Client in relation to the rights granted to DACS under this Agreement and shall account to the Successor for such monies after deduction of DACS' management fee prevailing at the time of payment (currently 35% of the image hire fee paid to DACS by the Image Hire Client) and any additional expenses incurred by DACS, which have been notified to and approved by the Successor. DACS has the right to vary the amount of the management fee on giving the Successor three months' written notice of the same.
- 4.6. DACS shall use its reasonable endeavours to collect such monies as are due to the Successor from the Image Hire Client or other user of the Works and shall account to the Successor for such monies after deduction of DACS' management fee prevailing at the time of payment to the Successor. DACS shall not be deemed to hold such monies on trust for the Successor, whose sole remedy against DACS in respect of the same shall be limited to recovery of the contractual debt owed to the Successor by DACS. DACS reserves the right to change its policy relating to the distribution of monies due to the Successor at any time.

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4.7. On the Successor's written request, DACS will report to the Successor within two (2) calendar months of the end of each Quarter the number of copies of each of the Images it has supplied to Image Hire Clients in the preceding Quarter.

5. Infringement of Rights

If the Successor (or where the Successor consists of more than one person, where any such person) becomes aware during the continuance of this Agreement that use of the Artist's Work(s) infringes any rights of another person, the Successor shall immediately give DACS full particulars in writing thereof.

6. Warranties

The Successor warrants that:

- (a) the Successor has good right and full power to enter into this Agreement and to grant the licence hereunder to DACS free from all claims and encumbrances and to appoint DACS as his/her sole agent upon the terms and conditions set out in this Agreement, and shall do all further acts as may be required by DACS in order to carry out and/or give effect to this Agreement;
- (b) the Successor owns all Rights, title to the Rights and interest in the Rights to the exclusion of all others and the Copyright in the Works licensed to DACS under this Agreement (save where (a) a Work was created by the Artist with others, such Work(s) having been listed by the Successor in schedule A to the Membership Agreement, in which case the Successor warrants in relation to the Rights, title to the Rights and interest in the Rights in his contribution to the Work(s), as set out in schedule A to the Membership Agreement, and (b) an Image has been assigned or licensed exclusively to another party, such prior assignments and licences having been listed in the schedule to this Agreement); and
- (c) the Successor shall indemnify 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 Successor of any warranty, representation or undertaking set out in this Agreement.

7. Entire Agreement

The Agreement is subject to DACS' Memorandum and Articles of Association and the Membership Agreement. In the event of any discrepancy between the terms of this Agreement and DACS' Memorandum and Articles of Association, the latter shall prevail. In the event of any discrepancy between the terms of this Agreement and the Membership Agreement, the latter shall prevail, save that DACS' Memorandum and Articles of Association shall prevail over the Membership Agreement.

8. Term and Termination

8.1. 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 Successor gives notice to DACS, such notice shall be addressed to DACS' Director of Services. Expiry or termination of this Agreement shall not affect the Membership Agreement.

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8.2. Any image hire licence granted by DACS to an Image Hire Client in respect of any of the rights subject to this Agreement shall survive the termination of this Agreement for any reason until the natural expiry of the licence.

9. 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.

10. 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.

11. Third Party Rights

Neither party hereto may assign the benefit or burden of this Agreement without the prior written consent of the other party; the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

12. Variation

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

13. 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.

14. Limitation of Liability

Nothing in this Agreement shall operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

15. 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.

16. 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 Artimage Agreement Term Sheet, or, if not specified, the date on which it is executed by the last party.