

## DACS Digital Publishing Licence Terms and Conditions November 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 Digital Publication, such notice being available to the public without a charge of any kind being imposed to view it;

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

**"Artist"** means the Artist as set out in 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 / page of a Digital Publication;

**"Credit"** means a Credit as set out in the Term Sheet;

**"Digital Publication"** means the publication set out in the Term Sheet (or any edition of the publication which does not differ materially from the first edition of the publication) reproducing the whole or part of the Work or any of them. (For the purposes of assessing "material difference", a publication will be materially different from the first edition where there is any more than a 20% change to the content of that publication. For the purposes of assessing percentage difference, changes to the size, language, layout, font and/or index material of the earlier edition are to be disregarded);

**"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);

**"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;

**"Licensed Acts"** means the right to:

- (a) copy the Work (including to Cache, Host, or Zip the Work) only as necessary for inclusion in the Digital Publication;
- (b) include such copies of the Work in the Digital Publication;
- (c) make copies of the Digital Publication available to the public by way of a Download;
- (d) sell the Agreed Quantity of the Digital Publication;
- (e) communicate the Digital Publication to the public by way of a Download;
- (f) communicate part (not more than 15%) of the Digital Publication to the public by way of a temporary preview of the Digital Publication, which is not a Download;

but not the right to:

- (i) alter or adapt the Work; or
- (ii) rent or lend the Digital Publication to the public whereby a temporary copy of the Digital Publication is made by the User, nor to authorise third parties to do so;

**"Licence Fee"** means the Licence Fee as set out in the Term Sheet;

**"Owner"** means the Owner of the copyright in the Work, if different from the Artist;

**"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 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;

**"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 Digital Publishing Licence Term Sheet signed on behalf of DACS and the Licensee setting out the principal terms of this Agreement;

**"Territory"** means the Territory as set out in the Term Sheet;

**"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 by Users to Download and/or store a copy of the Digital Publication;

**"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 15.

- 3.2 Provided that the Licensee has complied with the terms and conditions of this Agreement, at any time prior to the end of the Term, the Licensee may serve written notice on DACS that it wishes to increase the Agreed Quantity upon payment of an amount equal to the difference between the Licence Fee for the actual Agreed Quantity as set out in the Term Sheet, and DACS' standard licence fee for the increased Agreed Quantity as of the date of the Licensee's subsequent request.

## 4. Restrictions

- 4.1 Title to, and ownership of, all copyright in the Work shall remain with DACS or the Artist, as applicable.
- 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 (as applicable). 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.

### No Alterations to Work

- 4.3 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 electronic copying, storage or delivery process or as otherwise agreed in writing with DACS).
- 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.

### Digital Copies Only

- 4.5 Save as agreed in writing by DACS or as permitted by law, this Licence only includes the right to exploit digital versions of the Digital Publication. Should the Licensee wish to exploit physical copies of the Digital Publication, a separate licence from DACS is required.

### Cover Use

- 4.6 The Licensee may not reproduce, whether in whole or in part, any or all of the Work on the Cover of the Digital Publication 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 seek to obtain the relevant Artist's approval,

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

### No Promotional Use

- 4.7 The Licensee shall not use the Work or part of the Work 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 a Work on the Cover, the Licensee may include a reproduction of the Cover in an Advertisement for the Digital Publication on the Licensee's website and in the Licensee's trade catalogue; and
  - (b) the Licensee may include a photograph of a page spread from the Digital Publication reproducing the Work on the Licensee's website and in the Licensee's trade catalogue.

## Number Of Copies

- 4.8 Only one copy of each Work may be included in the Digital Publication, unless otherwise indicated in the Term Sheet.
- 4.9 The Licensee may allow Users to Download single chapters of the Digital Publication. However, a Download of a chapter shall be dealt with, for the purposes of this Agreement, as a Download of the full Digital Publication.

## No Direct Contact with Artist

- 4.10 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 Digital Publication.

## Separate Licences Required

- 4.11 Where there are joint owners of the copyright in a Work and DACS does not represent all of the parties owning or controlling the rights in such Work, the Licence is not a licence for the rights owned or controlled by the joint owner(s) whom DACS does not represent.
- 4.12 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;
  - (b) any protected content whatsoever that may be included, featured or represented within the Work, including copyrights, trade marks, likenesses or image rights.

## Restrictions on Use

- 4.13 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.

## **5. Digital Rights Management**

- 5.1 The Licensee shall, at its own cost, implement the DRM such that the Licensee uses its best endeavours to ensure that:
- (a) the Work 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 Work;
  - (c) 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;
  - (d) Users are not able to remove, bypass, circumvent, neutralise, or modify any of the DRM.
- 5.2 The Licensee shall ensure that the Work is 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. Use by Users

The Licensee shall ensure that each User, before the Licensee delivers the Digital Publication to them, agrees to terms and conditions of use of the Digital Publication that:

- (a) require them to comply with all applicable laws in using the Digital Publication;
- (b) state that the Digital Publication being supplied is only for the User's personal use and shall not be sold or lent to third parties;
- (c) prohibit reproduction or communication of the Digital Publication and / or the Work to the public that violates applicable law or the rights of third parties; and
- (d) contain a reservation of all intellectual property rights and other rights in the Digital Publication.

## 7. Rights of Approval

- 7.1 Prior to the initial creation and communication of the Digital Publication to the public, the Licensee shall, if so requested by DACS or the Artist, provide for approval by DACS or the Artist Samples of the intended use of the Work in the Digital Publication in the form stipulated by DACS (which shall include digital layouts and proofs). The Licensee shall not commence any communication of the Digital Publications to the public until such approval is given in writing by DACS. After such Samples have been approved, the Licensee shall not depart therefrom in any material respect without the prior written consent of DACS.
- 7.2 No later than one month after the Digital Publication has been made available to the public, the Licensee shall submit to DACS the Samples. The Licensee shall provide further copies of the Digital Publication during the Term, if requested by DACS on behalf of the Artist from time to time. Thereafter, if the Licensee makes any permitted change to the content of the Digital Publication and DACS requests a sample, the Licensee shall submit such sample to DACS no later than one month after receipt of DACS' request.
- 7.3 The Licensee shall use its best endeavours to ensure that the colour of the digital copies of the Work matches the colour of the original Work.

## 8. Licensee's Service Providers

The Licensee agrees and undertakes to DACS that, if it wishes to have a Digital Publication or any component, element or part thereof which features the Work copied, stored, Cached, Hosted or communicated to the public by a third party, the Licensee shall use its best endeavours to ensure that each Service Provider observes all of the restrictions set out in this Agreement applicable to the protection of the Work and all rights therein and that the Service Provider does not sell or offer for sale the Digital Publication or any component, element or part thereof which features the Work to any person other than the Licensee.

## 9. Licence Fee

- 9.1 The Licensee shall pay to DACS the Licence Fee within 30 days from the date of invoice, unless agreed otherwise with DACS in writing. The Licence Fee is non-returnable.
- 9.2 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.

- 9.3 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 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 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.
- 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 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.
- 9.6 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.

## 10. Auditing and Reporting

- 10.1 The Licensee shall, on written request, give to DACS any information as to its use of the Licence 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 Digital Publications Downloaded or communicated to the public in any way (including both sold copies and Samples and review copies, if any and if permitted) in the preceding [calendar] year.
- 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 Digital Publication 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 Digital Publication that have been sold 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. Credits

The Licensee shall ensure that the Credit appears on or in each copy of the Digital Publication with reasonable prominence. By way of illustration, the inclusion of the Credit either adjacent to the licensed reproduction of the Work or any of them, or in the acknowledgements page of the Digital Publication shall constitute reasonable prominence.

## 12. Warranties and Representations

12.1 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 as set out herein or as expressly agreed in writing by the Artist;
- (f) each and every one of the Digital Publications shall contain the Credit;
- (g) it will not at any time do or suffer to be done any act which will in any way impair or affect the copyright in the Work;
- (h) it will ensure that no exploitation of the Digital Publication shall facilitate or encourage reproduction by unlicensed third parties of a Work alone or out of context; and
- (i) 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.

12.2 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 or which arise out of any non-performance by the Licensee of any of the warranties in Clause 12.1 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.

12.3 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.



12.4 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 12.3

## 13. Infringement

### Claims Against Third Parties

13.1 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.

13.2 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).

13.3 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

13.4 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.

13.5 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.

13.6 Subject to the Licensee's full compliance with Clause 13.5, 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.

## 14. Limitation of Liability

14.1 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.

14.2 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.

14.3 Save as set out in Clauses 13.6 and 14.1, DACS' total liability under this Agreement shall be limited to the amount of the Licence Fee actually received by DACS.

## 15. 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).

## 16. Provisions After Termination

16.1 Upon termination of this Agreement all rights and licences granted in this Agreement shall cease and the Licensee shall immediately discontinue all exploitation of the Digital Publication incorporating the Work.

16.2 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.

## 17. 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.

## 18. Notices

18.1 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.

18.2 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.

18.3 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.

## 19. Assignment and License

19.1 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 Digital Publication;
- (b) permits a third party to communicate to the public under its own imprint one or more of the Digital Publication;
- (c) sell or otherwise dispose to a third party of any part of its business which deals with or has dealt with the Digital Publication,

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

19.2 In the event of a sale, disposal or sub-licence as set out in Clause 19.1 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.

## **20. Third Party Rights**

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

## **21. Variation and Waiver**

- 21.1 Any variation of this Agreement shall be in writing and signed by or on behalf of both parties.
- 21.2 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.
- 21.3 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

## **22. 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.

## **23. Severance**

- 23.1 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.
- 23.2 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.

## **24. 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 in the Digital Publication 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.

## **25. Governing Law and Jurisdiction**

25.1 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.

25.2 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).

## **26. 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.