



department for
**culture, media
and sport**

Reproduction Agreement - Film

May 2009

SAMPLE

improving
the quality
of life for all

Reproduction Agreement - Film

AGREEMENT NO.

THIS DEED is made the **day of** **, 20**

BETWEEN:

THE SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT of
2/4 Cockspur Street, London SW1Y 5DH, ("the Owner")

and

(Name of Licensee), of

(address) ("the Licensee")

SAMPLE

WHEREAS:

The Licensee wishes to acquire, and the Owner wishes to grant, a licence to the Licensee to enable the use of the Image for the Purpose in accordance with the terms of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement headings used are for interpretation only and, unless the context otherwise requires, expressions defined in the Copyright, Designs and Patents Act 1988 (as amended) shall have the same meanings as in that Act and the expressions in this section shall be defined as follows:

"Broadcast" - means, subject to any Permitted World Rights, in the case of non-printed Media Form specified in the Reproduction Application Form (but excluding Website Publication) one television or equivalent audiovisual broadcast or film transmission (simultaneously or non-simultaneously live and/or recorded) of the Media Form by or for the Licensee through the channel and/or service as are specified in the Reproduction Application Form and in accordance with this Agreement;

"Image" - means a digital or physical, or audiovisual reproduction of the original artistic work owned by the Owner and specified in the Reproduction Application Form as supplied to the Licensee by the Owner, or as produced by the Licensee by the permitted filming of the original artistic work for the production of the Media Form for the Purpose in accordance with the terms of this Agreement;

"Inclusion Period" - means:

- (a) the period from and including the date of this Agreement until and including the expiry of the date of the Purpose which for the avoidance of doubt shall be the actual date of the Broadcast of the Media Form containing the Image, and
- (b) in the case of Permitted World Rights, shall be the period from and including the date of this Agreement until and including the date of the expiry of the term of years as indicated on the Reproduction Application Form.

"Fee" - means the sum of [insert fee or state "a peppercorn if demanded by the Owner" if no fee required] payable by the Licensee to the Owner on the date of this Agreement;

"Licensee" - means the second named party to this Agreement and, where the context admits, includes any subsidiary, associated company, assignee, licensee or distributor and any other person, firm or company deriving title through or under the Licensee.

"Media Form" - means the film or programme or other audio visual media as is specified in the Reproduction Application Form;

"Purpose" - means the one-off incorporation of the Image in the Media Form as specified in the Reproduction Application Form but which for the avoidance of doubt includes and is limited to the Broadcast of the Media Form on or around the date specified therein and shall not include any other publication or incorporation whatsoever;

"Reproduction Application Form" - means the form annexed hereto (or such other form of request as is accepted by the Owner and annexed hereto) as completed by the Licensee and as agreed by the Owner and forming part of this Agreement;

"Rights" - means, subject to any Permitted World Rights, the non-exclusive right by way of licence to use the Image solely for the Purpose for the duration of the Inclusion Period and in accordance with the terms of this Agreement. All further releases or uses of the Image other than that for the Purpose, necessitate a new application to the Government Art Collection and payment of a further fee.

"Permitted World Rights" - means, where expressly indicated and included in the Reproduction Application Form, the extended non-exclusive Broadcast rights (including for language or foreign distribution purposes) as are specified therein for the duration of the Inclusion Period and, for the avoidance of doubt, lack of such express indication of Permitted World Rights on the Reproduction Application Form shall mean the express exclusion of Permitted World Rights from this Agreement.

"Public Service Use Rights" - Means, in addition to the Broadcast, the right to make the Media form available through any service now existing or developed in the future including but not limited to internet streaming of the Media Form simultaneously with the conventional wireless television Broadcast and video on demand "catch-up" services including transferring a copy of the Media Form for temporary or permanent use by members of the public, but excluding further conventional wireless television or film broadcasts.

"Third Party Consents" - means, without prejudice to **Clause 6.1**, such author or third party consents or permissions which the Owner has identified to the Licensee as relating to intellectual property rights (including but not limited to copyright) in the Image of which the Owner is actually aware as at or around the date of receipt of the Reproduction Application Form and which require the Licensee to obtain permission or consent prior to supply of the Image by the Owner for use by the Licensee for the Purpose pursuant to this Agreement.

2. CONSIDERATION

Subject to receipt by the Owner from the Licensee of

- a) the Fee; and
- b) copies of Third Party Consents;

and in consideration of the covenants contained in this Agreement the Owner grants the Rights as defined in **Clause 3** to the Licensee.

3. RIGHTS

The Licensee is hereby granted:

- a) subject to **Clause 5.2** and only where expressly specified in the Reproduction Application Form the non-exclusive right to produce or make the Image by the filming of the original artwork owned by the Owner and specified in the Reproduction Application Form; and
- b) the Rights; and
- c) the Public Service Use Rights; and
- d) such Permitted World Rights as are specified in the Reproduction Application Form, if any.

4. THE OWNER'S OBLIGATIONS AND LIABILITIES

4.1. The Owner covenants with the Licensee to use reasonable endeavours to provide the Image or access to the Image to the Licensee within a reasonable time of receiving a copy of this Agreement signed by the Licensee.

4.2. The Owner shall identify to the Licensee the Third Party Consents as soon as practicable following receipt of the Reproduction Application Form but in so doing does not make any warranty or representation in respect of the extent of third party rights in the Image or its subject matter nor the extent of permissions or consents required for any use of the Image.

4.3. Subject to **clause 4.4** the Owner's liability for any type of loss suffered by the Licensee for breach of this Agreement, whether arising from breach of a duty in contract or tort or in any other way (including loss arising from the Owner's negligence or from claims by third parties), shall not exceed a sum equivalent to the amount of the Fee.

4.4. The Owner shall not be liable for any loss or damage suffered by the Licensee arising from the use of the Image for the Purpose by the Licensee whether permitted or not by this Agreement.

5 THE LICENSEE'S OBLIGATIONS

The Licensee covenants with the Owner that:

5.1. Third Party Interests

5.1.1. Prior to the production of the Media Form containing the Image, the Licensee shall obtain all permissions and consents as may be required for use of the Image for the Purpose including but not limited to the Third Party Consents and such other permissions and consents in respect of any author or third party copyright or other intellectual property rights in the Image and in any matter or information comprising the subject matter of the Image; and

5.1.2. The Licensee shall not use or reproduce the Image in any way before obtaining all such permissions; and

5.1.3. Where the Owner either owns the Image and/or copyright except moral rights in the same, or where the Owner is authorised by the copyright owner of the image to permit use of the Image by third parties, the Licensee shall not do any act restricted by the copyright in any original work reproduced in the image or in respect of which the Image is a reproduction or to do any act which infringes any moral right.

5.2. Filming

Where the non-exclusive right to reproduce the Image by filming is granted to the Licensee pursuant to **Clause 3.a)**, the Licensee shall comply with the covenants contained in **Schedule 1**.

5.3. Retention and Return of Image

Immediately on completion of the Purpose and in any event (unless an extension of time has been agreed between the parties) within 3 months of despatch to the Licensee (where the image has been so dispatched) the Licensee shall:

- a)** delete all digital storage, record and reproduction of the Image other than that which is incorporated or published for the Purpose in the Media Form as permitted by this Agreement; and
- b)** where the Image is supplied to the Licensee as a physical reproduction or as a digital reproduction supplied on physical storage media, to return the Image and any storage method materials in as good a condition as it was when provided to the Licensee to the Owner at: The Government Art Collection, Department for Culture, Media and Sport, 2/4 Cockspur Street, London SW1Y 5DH.

5.4. Dealings

The Licensee shall not do any of the following;

- a)** permit others to use the Image or any part of it or any reproduction of the Image or part of it except for the purpose of assisting the Licensee in incorporating the Image into the Programme;
- b)** use the Image or any part of it or any reproduction of the Image or any part of it except for incorporating the Image into the Programme and in particular not to include the same in any excerpt or adaptation of the media form;
- c)** reproduce the Image to a size which is the same as the original work in respect of which the Image is a reproduction;
- d)** manipulate, alter, superimpose with other material or in any way deface any part of the image without prior agreement of the Owner;
- e)** use the Image without giving the Owner an acknowledgement in the end roller credits of the Media Form in the following form: "© Crown Copyright: UK Government Art Collection".

6. LICENSEE LIABILITIES

The Licensee shall indemnify the Owner and keep the Owner fully indemnified on a pound for pound basis against all losses, actions, claims, proceedings, costs and damages (including any damages or compensation paid by the Owner on the advice of its legal advisers and after consultation with the Licensee to compromise or settle any claim) arising out of any act or omission by the Licensee constituting any breach of this Agreement or out of any claim by a third party which, if substantiated, arises out of any act or omission which would constitute such a breach.

7. DESPATCH AND RECEIPT

7.1. For the purposes of **clause 4.1**, the date of despatch of or access to the Image shall be the date on which according to the Owner's records the Image was despatched or access was given by the Owner and the date of receipt of the Agreement shall be the date on which according to the Owner's records the Agreement duly executed by the Licensee was received by the Owner.

7.2. The Image shall be deemed to have been received or produced by the Licensee in satisfactory condition and in accordance with this Agreement unless the Licensee advises the Owner to the contrary forthwith upon receiving or producing the Image and returns the Image to the Owner without use and with a description of the defect.

8. SUPPLY OF COMPLEMENTARY COPY

The Licensee shall, upon request by the Owner, provide to the Owner free of charge a viewing copy of the finished Media Form.

9. ACKNOWLEDGMENT OF RECEIPT OF ACCOMPANYING NOTES

The Licensee warrants that a copy of the document called "How to Obtain Photographic Images of Works of Art in the Government Art Collection - Guidance Notes" which provides guidance on some of the provisions in this document, has been received (or located and accessed on the Government Art Collection website), read and understood.

10. GOVERNING LAW AND JURISDICTION

This Agreement is governed by English law and is subject to the exclusive jurisdiction of the English courts.

SCHEDULE 1 – FILMING CONDITIONS

The Licensee covenants with the Owner that the Licensee shall at all times:

- a)** Not without express permission and supervision by the Owner, its employee, agent or representative to move or touch any work of art in the possession, care, custody or ownership of the Owner;
- b)** Not set up any filming equipment otherwise than under the supervision of the Owner or an employee, agent or representative of the Owner;
- c)** Keep all filming and lighting equipment at least two metres away from any works of art in the possession, care, custody or ownership of the Owner;
- d)** Switch all lighting equipment off immediately after each shooting sequence and take all other practical steps to avoid exposing any work of art to heat above the ambient room temperature in which the work of art is displayed;
- e)** the Licensee shall indemnify and keep indemnified the Secretary of State for Culture, Media and Sport for all losses including but not limited to the value or, in the case of damage, an amount equivalent to the diminution in value or the cost of restoration or replacement which ever shall be the greater, in respect of any work of art in the possession, care, custody or ownership of the Owner which is damaged, lost or destroyed before, during or after filming by the Licensee by reason of any act or default of the Licensee, its employees, agents or representatives.

IN WITNESS OF WHICH THE PARTIES HAVE CAUSED THIS DEED TO BE EXECUTED BY THEIR DULY AUTHORISED REPRESENTATIVES as follows:

**EXECUTED AS A DEED
FOR AND ON BEHALF OF THE OWNER**

Signed:
Name / Position:

Signed:
Name / Position:

**EXECUTED AS A DEED
FOR AND ON BEHALF OF THE LICENSEE**

Signed:
Name / Position:

AND (IF LICENSEE IS A COMPANY)

Name of Company:

Name / Position:

OR (IF LICENSEE IS AN INDIVIDUAL)

Signed:
Name of Witness:

Address of Witness: