

DATED

24 March

2009

THE BOARD OF TRUSTEES OF THE NATIONAL GALLERY

- and -

NATIONAL GALLERY COMPANY LIMITED

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IMAGE REPRODUCTION LICENCE

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**THIS AGREEMENT** is made on

24 Mar

2009

**BETWEEN**

- (1) **THE BOARD OF TRUSTEES OF THE NATIONAL GALLERY** of Trafalgar Square, London, WC2N 5DN ("the Trustees"); and
- (2) **NATIONAL GALLERY COMPANY LIMITED** a company registered in the UK with registered number 2280277 and having its registered office at St Vincent House, 30 Orange Street, London WC2H 7HH ("NGC").

**WHEREAS**

- (A) The Parties entered into the 1996 Licence (defined below) which permitted NGC to use and exploit certain of the Trustees' images and the 1996 Licence has since expired.
- (B) The Parties wish to regulate the manner in which NGC continues to use and exploit certain of the Trustees' images in the manner set out in this Agreement.

**IT IS AGREED as follows:**

**1. Definitions**

- 1.1 In this Agreement the following words and expressions shall have the following meanings:

"1996 Licence"

means an agreement between the Trustees and NGC dated 1 April 1996 which permitted NGC to use and exploit certain of the Trustees' images;

“Commencement Date”	means the date on which the 1996 Licence expired;
“Database”	means the Trustees’ electronic database of photographic images made available from a secure server in the Trustees’ control;
“Gallery”	means the National Gallery;
“Images”	means those Images in the Database that the Trustees have expressly indicated may be used by NGC;
“Intellectual Property Rights”	means any copyright, database right, publication right, rights in respect of any designs, patent rights, goodwill, rights in respect of any trade marks and any rights of a similar nature;
“Licence”	means any licence granted by NGC under Clause 3.1 and any sub-licence granted by a Licensee and the term “Licensee” shall be construed accordingly and shall include such sub-licensees;
“Net Sales Value”	means the fees actually recovered by NGC from the exploitation of the Images (whether by Licensees pursuant to Licences or otherwise), less any value added tax or other sales tax properly payable by NGC in respect of the sale of the relevant Image(s);
“Picture Library”	means all of the Images in the Database;
“Reference Data”	means information about each of the Images and the Works depicted therein;

“Royalty”	means 50% of all Net Sales Value;
“Term”	means the period from the Commencement Date until this Agreement is terminated under Clauses 9.1 or 9.2; and
“Transparencies”	means any transparencies or other hard-copy versions of Images; and
“Works”	means the artistic works represented in or the subject matter of the Images.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words expressed in the singular shall where the context so requires or permits include the plural and vice versa; and
- (b) clause headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## 2. Access to the Picture Library

- 2.1 Throughout the Term and subject to Clause 15 (Force Majeure) the Trustees shall make the Picture Library available to NGC as a database of uncompressed digital jpeg files or, if reasonably requested by NGC, as Transparencies or in such other format as the Trustees shall at their absolute discretion agree.
- 2.2 The Trustees shall supply or make available the Reference Data to NGC by such method and in such form as the Trustees shall notify NGC from time to time and shall inform NGC of any change to the Reference Data.
- 2.3 The Trustees shall supply or make available any Reference Data that it has in respect of an Image to NGC through the Picture Library or by such method and in such form as the Trustees shall notify NGC from time to time.

- 2.4 NGC acknowledges that the property in all Transparencies (and all copies made thereof) shall remain with the Trustees at all times.

3. **Grant of Rights**

- 3.1 In consideration of NGC's payment of the Royalties and subject to the terms and conditions of this Agreement, the Trustees hereby grant to NGC during the Term a licence to exploit commercially the Picture Library throughout the world by:

- (a) itself using, copying, reproducing and duplicating the Images and the Reference Data;
- (b) granting licences to third parties permitting the use, copying, reproduction and duplication of the Images and the Reference Data ; and
- (c) granting licences to third parties permitting those third parties to sub-licence the use, copying, reproduction and duplication of the Images and the Reference Data .

- 3.2 NGC shall be entitled to photograph and/or film (and to permit third parties to photograph and/or film):

- (a) the Works; and
- (b) the Gallery

with the prior consent of the Gallery (and subject always to the availability of time and space) provided that NGC complies with all requests made by the Trustees.

- 3.3 Nothing in this Agreement shall limit the Trustees' rights to use the Images to advertise or promote the Gallery or to educate the public about the Works.

#### **4. Permitted Use**

- 4.1 NGC shall be responsible for ensuring that the image quality of Image reproductions made by NGC or any Licensee shall be appropriate in the circumstances and of a type approved by the Trustees and complying with any policies or requirements set down by the Trustees from time to time.
- 4.2 NGC shall ensure that the terms and conditions of any Licence prohibits the reproduction and use of the Image or Reference Data in any context which might discredit or damage the reputation and standing of the Trustees or the Gallery or which might infringe the Intellectual Property Rights (or any other rights) of any third party.
- 4.3 NGC shall not enter into any contract or other arrangement with any third party for the grant of exclusive rights or assignment of rights in relation to any of the Images or Reference Data.
- 4.4 NGC shall provide to the Trustees upon request a copy of any Licence.
- 4.5 NGC shall ensure that all uses of the Images under this Agreement, whether by the NGC itself or pursuant to any Licence, include the following credit line (or such other credit line as the Trustees may notify to NGC from time to time) in a legible form:

© *The National Gallery*

- 4.6 NGC shall not make use of any part of the Database other than the Picture Library.

#### **5. NGC's Duties**

- 5.1 Subject always to Clause 5.2 NGC undertakes to use its best endeavours to ensure that fees charged under Licences shall be competitive and consistent with the prevailing market rate.

- 5.2 From time to time where requested by the Trustees NGC agrees to make reasonable numbers of copies of Images available as a service to the public in the manner requested by the Trustees.
- 5.3 NGC shall use its best endeavours to promote the Picture Library and the grant of Licences throughout the world, and to collect the sums arising in connection with the Licences and to maintain a complete and accurate record of the Licences.
- 5.4 NGC shall act in good faith towards the Trustees and shall do nothing which might discredit or damage the reputation and standing of the Gallery or the Trustees.
- 5.5 NGC shall, and shall ensure that all Licensees shall, use the Images and the Reference Data in accordance with any reasonable rules or procedures notified to NGC by the Trustees.
- 5.6 NGC shall, and shall ensure that all Licensees shall, at all times comply with all applicable laws, regulations and codes of conduct relating to the licensing, promotion and sale of the Images and the performance of its duties under this Agreement.
- 5.7 NGC shall, and shall ensure that all Licensees shall, take all reasonable steps for the safe keeping of the Images and Transparencies in accordance with the best generally accepted practices, and shall ensure that appropriate legal and technological protection is applied to Images and their circulation, in order to prevent illegal or unauthorised uses.
- 5.8 NGC shall, and shall ensure that all Licensees shall, ensure that any advertising published by it/them that involves the use of the Images is not false, misleading, or defamatory, does not infringe the Intellectual Property rights of any third party, is not in breach of the requirements or codes of any relevant legislation, and shall not knowingly discredit or damage the reputation or standing of the Trustees or the Gallery.

6. **Intellectual Property**

6.1 NGC accepts, and shall ensure that all Licensees accept, that Intellectual Property Rights subsist in:

- (a) the Database;
- (b) the Picture Library;
- (c) all Reference Data;
- (d) all Images; and
- (e) all adaptations and copies of the works described at (a) to (d) above

and that all such Intellectual Property Rights vest in the Trustees alone.

6.2 NGC accepts, and shall ensure that all Licensees accept, that it/they shall have no right, licence or interest in or to the any of the Intellectual Property Rights described at Clause 6.1 above save as expressly set out in this Agreement.

6.3 NGC shall inform the Trustees immediately it becomes aware or suspects that any of the Images have been or may be intended to be reproduced, distributed or communicated to the public:

- (a) by a third party otherwise than pursuant to a Licence; or
- (b) by a Licensee in breach of the terms of any Licence.

6.4 NGC shall take such action as the Trustees reasonably requires in relation to any infringement of the Trustees' rights in the Images. In the event that the Trustees and NGC pursue a formal legal action against a third party, the costs of the action shall be borne and any damages or other compensation accruing shall be shared equally between the Parties.



- 6.5 NGC shall have the right to bring legal proceedings in its own name and at its own cost in order to recover unpaid fees from Licensees and shall be under no obligation to consult with the Trustees in relation to them, save that NGC shall keep the Trustees informed of any plans to bring such legal proceedings and the progress of the same.

## 7. Payment

- 7.1 In consideration of the grant of the licence contained in this Agreement NGC shall pay to the Trustees the Royalty in respect of all Net Sales Value generated during the Term, along with any value added tax (if appropriate).
- 7.2 NGC shall within thirty (30) days of the end of each calendar quarter during the Term submit to the Trustees by post and electronically as a Microsoft Excel spreadsheet a quarterly royalty statement together with payment in UK Pounds Sterling by electronic funds transfer to such account number as the Trustees shall specify of the Royalty due to the Trustees in respect of Net Sales Value received during the preceding quarter.
- 7.3 Where requested by the Trustees, the NGC shall ensure that the quarterly royalty statement shall give such particulars of all Licences granted by NGC as the Trustees have reasonably required.
- 7.4 NGC shall maintain its books and records during the Term, in such manner as to reflect clearly and accurately the sales, returns, refunds and payments for the Images and the cash received therefrom.
- 7.5 The Trustees shall be entitled at any reasonable time during the Term and on reasonable prior written notice to have NGC's books, records and audited accounts examined by a member of the Trustees' financial staff and/or a chartered accountant nominated by the Trustees at the Trustees' expense in order to verify and reconcile the Royalties due and paid to the Trustees.

- 7.6 If the examination carried out under clause 7.5 reveals an underpayment of more than 5%, then the costs of the said examination shall be borne by NGC but the Trustees shall bear the said costs if the underpayment is less than 5%.

**8. Warranty**

The Trustees warrant that they are authorised to appoint NGC for the purposes contemplated in this Agreement, that they hold the right to authorise the licensing of the copyright in the Images to the NGC and to Licensees and that the use made of the Images by the NGC under this Agreement will not infringe the Intellectual Property Rights of any third party.

**9. Duration and Termination**

- 9.1 This Agreement shall be deemed to have come into effect on the Commencement Date and, subject to clause 9.2, shall continue in force unless the Trustees or NGC terminates the Agreement by giving the other at least six months notice of termination.

- 9.2 Either Party may terminate this Agreement at any time (without prejudice to its other remedies):

- (a) immediately by written notice if the other shall be in breach of any of the terms of this Agreement and fails to remedy the breach (if capable of remedy) to the reasonable satisfaction of the Party not in default within thirty (30) days of written notice of such breach being given by the Party not in default; or
- (b) immediately by written notice if the other enters into compulsory or voluntary liquidation or convenes a meeting with its creditors or has a receiver or manager or an administrative receiver or an administrator appointed over its assets (or suffers any similar appointment or process

under the law of its place of incorporation or domicile) or ceases (or threatens to cease) for any reason to carry on business or if it appears to the Party not in difficulties that it has or may become unable to pay its debts or satisfy its obligations under this Agreement.

**10. Effect of Termination**

10.1 Upon termination or expiration of this Agreement for whatever reason:

- (a) the rights hereby granted to NGC shall be revoked and NGC shall forthwith cease to enter into Licences, or to use the Images, Reference Data, Picture Library and Database in any form;
- (b) NGC shall permanently delete any digital copies of Images and Reference Data or reproductions thereof from all NGC's sources, including NGC Website, server, databases, back up and any other method of storage whether or not accessible to the public; and
- (c) NGC shall return to the Trustees by a safe method affording proof of delivery, or (at the Trustees' option) destroy, any Transparencies or non-digital reproduction of any Image or Reference Data and any items bearing the Images or the Reference Data or reproductions thereof, which may be in or come into NGC's possession at the date of termination or expiration.

10.2 Licences which are already in force at the date of termination or expiry shall survive the termination or expiry of this Agreement. Within thirty (30) days of Termination, NGC shall supply the Trustees with a statement of any surviving Licences specifying (in respect of each Licence) the identity of the Image(s), the use granted of the Image(s), the name of the Licensee, the date of the Licence, and the total Royalty due (or likely to be due) to the Trustees during the life of the Licence. The Trustees shall be entitled at their option either:

- (a) to require NGC to continue to pay the Royalty in respect of the surviving Licences in accordance with Clause 7, or
- (b) to require a novation of the Licence in favour of the Trustees.

**11. Notices**

Any notice to be given under by either Party to this Agreement shall be in writing and sent by first or second class mail to the other Party at the other Party's address as indicated in this Agreement (or as varied in writing from time to time).

**12. Assignment**

NGC shall not without the prior written consent of the Trustees, assign, transfer, mortgage, charge or deal in any manner with this Agreement or any of its rights and obligations under this Agreement, and shall not sub-contract or delegate in any manner any or all of its obligations under this Agreement to any third party except as expressly permitted.

**13. Entire Agreement**

This Agreement constitutes the whole Agreement between the Parties and supersedes all prior agreements, negotiations and discussions between the Parties relating to the subject matter. Nothing in this clause shall operate to exclude or limit liability for fraudulent misrepresentation.

**14. Variation**

No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

**15. Force Majeure**

15.1 No Party shall be liable to the other for any delay or non-performance of its obligation under this Agreement arising from any cause or causes beyond its reasonable control including, without limitation, any Act of God, act of government, fire, flood, explosion, strike, failure of a telecommunications network or other industrial action, or civil commotion.

15.2 If any Party is prevented from performing its obligations by an event of force majeure for more than eight (8) weeks, the Parties shall enter into bona fide discussions with a view to alleviating its effects, or to agree upon such alternative arrangements as may be fair and reasonable.

**16. Waiver**

No failure or delay by a Party to exercise or enforce any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

**17. Severance**

If any provision of this Agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, such validity shall not

affect the other provisions of this Agreement which shall remain in full force and effect.

**18. Third party rights**

Save as expressly stated herein a person who is not a Party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999

**19. Relationship of Parties**

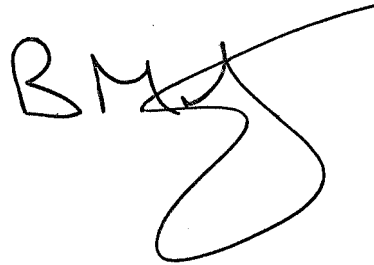
The Parties shall act as independent contractors and nothing in this Agreement shall amount to an agency, joint venture or partnership between them.

**20. Governing law and jurisdiction**

This Agreement shall be governed by and interpreted in accordance with English Law and the Parties hereby irrevocably agree to submit to the exclusive jurisdiction of the English Courts.

**AS WITNESS** the hands of the Parties hereto on the date first before written:

SIGNED by for and on behalf of The )  
Board of Trustees of the National )  
Gallery )

A handwritten signature in black ink, appearing to be 'B. M. J.' with a large, sweeping flourish at the end.

SIGNED by The National Gallery )  
Company Limited acting by )  
two Directors/ a Director and the )  
Secretary: )

A handwritten signature in black ink, reading 'Julie Molloy' in a cursive script.A handwritten signature in black ink, reading 'C. Walden' in a cursive script, followed by a long horizontal line.