

PICSEL

AUTHORITY TO ACT

THIS AGREEMENT is made on [] (the "**Authority to Act**")

BETWEEN PICSEL LIMITED whose registered number is 09899186 and whose registered office is 59 Tranquil Vale, London, SE3 0BS ("PICSEL"); and the Authorising Rightholder set out below.

Name of Authorising Rightholder			
Address			
Postcode		Phone number	
Contact name		Email address	
VAT Registration number			

By signing where indicated, you authorise PICSEL to exercise on your behalf the Mandated Rights specified, on the terms and conditions set out below:-

MANDATED RIGHTS CATEGORY	TERRITORY	EFFECTIVE DATE	AGREEMENT TO MANDATED RIGHTS CATEGORY SPECIFIED
<p>The following non-exclusive rights, granted on the terms and conditions of CLA Licences:-</p> <ul style="list-style-type: none"> a) Right to Photocopy; b) Right to Scan c) Right to copy digital content e.g. PDFs from electronic subscriptions, websites or scanned articles circulated by email – that is, digital-to-digital, digital-to-print and print-to-digital-to-print d) Distribution by email e) Storage on internal Secure Networks. <p>(CLA Licence definitions apply)</p>	World	<p>.....</p> <p>Date (D/M/YYYY)</p>	<p>.....</p> <p>Name</p> <p>.....</p> <p>Position with Authorising Rightholder</p>
<p>The following non-exclusive rights granted on the terms and conditions of the ERA Licence operated by ERA:-</p> <ul style="list-style-type: none"> a) Right to cause or authorise the making of ERA Recordings for non-commercial, educational purposes; b) Right to make available ERA Recordings and to permit access to such ERA Recordings through an Authorised Network <p>(ERA Licence definitions apply)</p>	World	<p>.....</p> <p>Date (D/M/YYYY)</p>	<p>.....</p> <p>Name</p> <p>.....</p> <p>Position with Authorising Rightholder</p>
<p>The non-exclusive rights granted on the terms and conditions of the NLA Licences operated NLA to license images as part of the limited collective rights exercised by NLA on behalf of certain magazine publishers. These licences covers businesses, Media Monitoring Agencies, PR agencies, the public sector, and charities</p>	World	<p>.....</p> <p>Date (D/M/YYYY)</p>	<p>.....</p> <p>Name</p> <p>.....</p> <p>Position with Authorising Rightholder</p>



TERMS AND CONDITIONS OF AUTHORITY TO ACT

BACKGROUND:

- A PICSEL is a Collective Management Organisation established to exercise and enforce licences and other agreements in respect of the reproduction and other exploitation of Images in which copyright and other rights of a similar nature subsist, and to collect and distribute the income from such licences and other agreements as agent for its members and non-members who authorise it to act on their behalf.
- B The Authorising Rightholder is a Rightholder in one or more Images and agrees to grant rights to PICSEL on the terms and conditions of this Authority to Act.

IT IS HEREBY AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Authority to Act the following words and expressions shall (except where the context otherwise requires) have the following meanings:

“Administration Charge(s)” means the commission and other fees charged by PICSEL for the administration of Mandated Rights on behalf of the Authorising Rightholder.

“Business” means the conduct of the activities forming the business of PICSEL as agreed from time to time by the Members under and in accordance with its articles of association.

“CLA Licences” means the licences offered by CLA to the education, corporate and public sectors that authorise users to copy and share published material

“Collective Management Organisation” means any organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one right-holder, for the collective benefit of those right-holders, as its sole or main purpose, and which fulfils one or both of the following criteria:

- (a) it is owned or controlled by its Members; and/or
- (b) it is organised on a not-for-profit basis.

“CLA” means the Copyright Licensing Agency Ltd.

“Collection Rights” means the right to collect the income accrued prior to the date of this Authority to Act but payable thereafter as a result of the exercise of rights previously granted by the Authorising Rightholder to DACS (whether exercised through CLA or otherwise).

“DACS” means the Design and Artist Copyright Society Ltd.

“Distribution Policy” means the policy adopted by the Members from time to time concerning the distribution of income arising from the exploitation by PICSEL of Images in accordance with the authorities to act granted by Rightholders.



“**ERA**” means Educational Recording Agency Ltd.

“**ERA Licence**” means the centrally negotiated licence operated by ERA that authorises teachers and lecturers to use licensed audio-visual programmes and radio broadcasts for educational purposes.

“**Image**” means an image, illustration and picture of any kind whatsoever, including without limitation a photograph, film, transparency, negative, design, artwork, painting, montage, drawing, plan, lithograph, engraving, computer or electronically generated visual illustration including without limitation a moving and interactive image, and any other item which may be offered for the purposes of reproduction. The term shall also be deemed to include a database of any of the aforementioned and any data contained therein.

“**Mandated Rights**” means the category or categories of rights set out at the head of this Authority to Act to which the Authorising Rightholder has, by its signature thereto, given its consent for PICSEL to administer the Works on the terms and conditions of this Authority to Act, and any additional category or categories of rights to which the Authorising Rightholder may from time to time in its sole discretion and in writing give its consent to be included within the terms of this Authority to Act.

“**Members**” means the members from time to time of PICSEL.

“**Net Receipts**” means all monies received by PICSEL from the exercise of the Mandated Rights less PICSEL's Administration Charge(s) and subject to PICSEL's payment obligations other agency or sub-licensee agreements.

“**NLA**” means NLA Media Access Limited.

“**NLA Licence**” means the centrally negotiated licences operated by NLA that license images as part of the limited collective rights exercised by NLA on behalf of certain magazine publishers. These licences covers businesses, Media Monitoring Agencies, PR agencies, the public sector, and charities

“**PICSEL Licences**” means licences granted by PICSEL or its agent(s) on behalf of authorising Rightholders in operation of the Business as the same may be amended or replaced from time to time.

“**Rightholder**” means any person (other than a collective management organisation) that owns or controls (whether exclusively or non-exclusively) a copyright or related right, or under an agreement for the exploitation of rights or by law is entitled to a share of the rights revenue from a copyright or related right.

“**Work**” means an Image in which copyright and other rights of a similar nature subsist, which is owned and/or controlled by the Authorising Rightholder, whether in whole or in part and whether exclusively or non-exclusively and which the Authorising Rightholder has not notified PICSEL should be excluded from the Mandated Rights in accordance with the procedure established for excluding Images from any category of Mandated Rights hereunder.

1.2 Words and expressions defined in the Copyright Designs & Patents Act 1988 (as amended, modified or re-enacted) shall, where the context permits, bear the same meanings in this Authority to Act. In this Authority to Act references to the singular



number only also include the plural and vice versa. Any reference to a clause is a reference to a clause of this Authority to Act. Clause headings are for ease of reference only and do not affect the construction or interpretation of this Authority to Act.

2. GRANT OF AUTHORITY

2.1 Subject to Clause 2.2 below, the Authorising Rightholder hereby, grants to PICSEL during the term hereof, as its sole agent

2.1.1 the authority to administer and exploit and enforce the Mandated Rights throughout the specified territory in accordance with the terms of this Authority to Act;

2.1.2 the Collection Rights.

2.1.3 the right to exercise the rights granted under this Clause 2.1 through PICSEL's agents and/or licensees, including without limitation, CLA under CLA Licences, ERA under ERA Licences and NLA under NLA Licences.

For the avoidance of doubt, all rights not expressly granted hereunder are reserved to the Authorising Rightholder.

2.2 The grant of authority hereunder is conditional upon the termination by the Authorising Rightholder of the grant of rights and/or mandate(s) previously granted by the Authorising Rightholder to DACS (if applicable). Upon termination, the Mandated Rights shall immediately vest in PICSEL without further formality but the Authorising Rightholder agrees to provide PICSEL with such supporting documentation as PICSEL may reasonably require in order to verify termination and reversion from DACS.

2.3 If applicable, the Authorising Rightholder reserves to itself the right to grant licences in respect of the Images solely in respect of non-commercial uses of the Mandated Rights.

2.4 The Authorising Rightholder undertakes that it will not, during the term of this Authority to Act, appoint any third party to act as its agent in respect of the Mandated Rights.

3. WARRANTY AND UNDERTAKING

3.1 The Authorising Rightholder warrants that it has the full right and authority to enter into this Authority to Act and that the exercise by PICSEL of the Mandated Rights will not violate or infringe the right of any third party or be in breach of any applicable laws or regulations.

3.2 The Authorising Rightholder warrants and undertakes with PICSEL that, where applicable, it shall appropriately and effectively allocate and distribute payments from the exploitation of the Mandated Rights hereunder due to the relevant Rightholder(s) of the Image(s) in accordance with the agreement(s) between the Authorising Rightholder and such Rightsholder(s).



- 3.3 The Authorising Rightholder agrees that this Authority to Act shall also be subject to PICSEL's Distribution Policy and any other relevant rules and policies validly adopted by PICSEL.
- 3.4 The Authorising Rightholder shall co-operate with PICSEL in any way that PICSEL may reasonably require (including without limitation the production of documents) to verify that it has the right to grant the Mandated Rights to PICSEL hereunder and that, where applicable, it is fulfilling its obligations under Clause 3.2 above.

4. INDEMNITIES

- 4.1 The Authorising Rightholder hereby indemnifies and agrees to keep indemnified PICSEL against all demands, claims, liabilities, costs and expense incurred by PICSEL or its licensees whatsoever arising out of a breach or alleged breach of the warranties set out in Clauses 3.1 and 3.2 above and its other obligations hereunder Provided That the above indemnity does not extend to any claims arising by reason of any wrongful act or default by PICSEL, its servants, agents. The Authorising Rightholder acknowledges that PICSEL may include indemnities in favour of licensees within licences granted by PICSEL in relation to the infringement of Images copied under such Licences and the validity of the rights granted thereunder.
- 4.2 In the event that PICSEL shall, in the exercise of its reasonable opinion, consider that the Authorising Rightholder may be in breach of warranty set out in Clause 3.1 above, it shall be entitled to take one or more of the following actions:-
- 4.2.1 it shall be entitled to suspend the exercise of the Mandated Rights in respect of the affected Works ("the Suspended Works") until the matter has been resolved ("the Suspension Period"); and/or
- 4.2.2 it shall be entitled to retain all or any portion of the Net Receipts ("the Suspended Receipts") relating to the Suspended Works which it has received or which it receives during the Suspension Period, and, without prejudice to any other right which PICSEL might have under Clause 4.1 above, it shall be entitled to set off such Suspended Receipts against any liability of the Authorising Rightholder to PICSEL under Clause 4.1; and/or
- 4.2.3 if resolution of the above matter results in the judgement or arbitration of a tribunal of competent jurisdiction or in a signed settlement between the parties to the dispute, PICSEL shall be entitled to make any necessary adjustments to the Net Receipts to reflect such judgement, arbitration or settlement.

5. TERM AND TERMINATION

- 5.1 Without prejudice to the ability of the Authorising Rightholder to withdraw Mandated Rights from its Mandate in accordance with Clause 5.3 below, the term of this Authority to Act commence on the date set out at the head of this agreement and shall remain in full force and effect unless and until the Authorising Rightholder shall give to PICSEL three (3) calendar month's notice in writing terminating the term hereof.
- 5.2 On termination of the term hereof in accordance with Clause 5.1 above this Authority to Act shall cease to have any force and effect save in respect of:



- (a) all PICSEL Licences granted by PICSEL or its agents and/or licensees (including without limitation CLA, ERA and NLA) entered into prior to and still in force on the date of termination in respect of which the Mandated Rights granted hereunder shall continue so as to permit such PICSEL Licences to continue in force and effect for their remaining duration in accordance with their terms and in respect of which applicable Net Receipts shall continue to be paid to the Authorising Rightholder which the Authorising Rightholder shall continue to distribute in accordance with Clause 3.2, where applicable; and
- (b) any other right or remedy which either the Authorising Rightholder or PICSEL may have in respect of any breach of this Authority to Act which existed at or before the date of termination; and
- (c) any other obligation which PICSEL and the Authorising Rightholder may have to each other in connection with distributions, Administration Charges and the provision of information shall continue to apply, where relevant.

5.3 At any time during the term hereof, the Authorising Rightholder shall be entitled to withdraw this Authority to Act in respect of specific:-

- (a) images; and/or
- (b) categories of Mandated Rights; and/or
- (c) territories

by giving three (3) months notice in writing in the form of the Withdrawal of Rights Form which PICSEL shall make available to the Authorising Rightholder on its website. Upon withdrawal, the provisions of Clause 5.2(a) to (c) shall apply to the rights in Images so withdrawn. Withdrawal shall be without prejudice to the Authority to Act in respect of any remaining Mandated Rights relating to Images not so withdrawn.

6. GENERAL

6.1 The Authorising Rightholder shall on the written request of PICSEL promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Authority to Act.

6.2 No failure to exercise or delay in exercising any right or remedy under this Authority to Act shall constitute a waiver thereof and no waiver by the Authorising Rightholder or PICSEL of any breach or non-fulfilment by the other of any provision of this Authority to Act shall be deemed to be a waiver of any subsequent or other breach of that or any other provision hereof and no single or partial exercise of any right or remedy under this Authority to Act shall preclude or restrict the further exercise of any such right or remedy. The rights and remedies of the Authorising Rightholder and PICSEL provided in this Authority to Act are cumulative and not exclusive of any rights and remedies provided by law.

6.3 No variation of this Authority to Act shall be valid unless it is in writing and executed by or on behalf of each of the Authorising Rightholder and PICSEL.



- 6.4 A person who is not a party to this Authority to Act shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Authority to Act. This Clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.
- 6.5 This Authority to Act shall be governed by and construed in accordance with English law and the Authorising Rightholder and PICSEL hereby submit for all purposes in connection with this Authority to Act to the non-exclusive jurisdiction of the English courts.