



Terms and Conditions of Membership

The following terms and conditions (“Terms and Conditions”) shall apply to all Members and prospective Members of the Own Art Scheme (“the Scheme”) operated by Creative Sector Services CIC (trading as Creative United) and shall apply to the exclusion of all other terms and conditions, express or implied. By applying to be a Member of the Scheme, applicants agree to be bound by these Terms and Conditions.

1. The Scheme

- 1.1 Own Art (“the Scheme”) is a nation-wide initiative supported by Arts Council England, Creative Scotland and Arts Council of Northern Ireland (“Scheme Partners”). The Scheme is operated by Creative Sector Services CIC trading as Creative United (“Creative United”; “we/us”) and provides approved retailers/galleries and online retailers/galleries of contemporary art and craft with the ability to offer customers interest-free loans to enable them to purchase works of art. We do not currently support applications from individual artists.
- 1.2 The Scheme is run by Creative United, currently in partnership with Mitsubishi HC Capital UK PLC trading as Novuna Consumer Finance, which provides the loans to customers (“the Credit Provider”).
- 1.3 The Own Art ‘stamp’ logo is a registered trade mark of Creative United.
- 1.4 For the purposes of the Scheme “Work/s of Art” shall mean any two or three-dimensional objects, or work in digital media, created by a living artist and commonly understood to be a Work of Art. This normally includes fine art (including paintings, original prints or multiples in limited editions (editions of up to 150), drawings, sculptures, photographic, and mixed-media installations), crafts (including ceramics, glasswork, textiles, metalwork, woodwork and jewellery), unique items of designer-made furniture, artist-made film and video and work in digital media
- 1.5 “Works of Art” are deemed not to include ‘reproduction prints’ of any kind and in any edition size, regardless of whether they have been signed and numbered by the artist. For the avoidance of doubt, digitally produced (eg “Giclée”) prints shall be considered Works of Art only where the artist has used digital technology specifically to conceive and create an image in this media; prints that are photographic or digital reproductions of original images created in other media are excluded.

2. Applications for membership

- 2.1 Scheme Membership (“Membership”) is open to sole traders, partnerships, companies or charities operating in England, Scotland and Northern Ireland whose primary business

activity is the presentation and sale of contemporary works of art by living artists. Businesses operating exclusively in the presentation and sale of works by a single artist only will not be eligible to apply. Where an applicant is a sole trader, the Member must be over 18 years of age.

2.2 Types of business that will be considered for membership of the Scheme include (but are not limited to):

- Commercial art galleries
- Publicly funded museums, galleries and arts centres
- Organisations involved in managing 'open studio' events
- Art fairs and auction houses
- Other for-profit and not-for-profit enterprises that can demonstrate that they meet our criteria for membership

2.3 Members must operate a UK bank account and be capable of administering standard banking procedures on regular payments and BACS payments from their trading premises or registered offices.

2.4 All applications for membership shall be accompanied by payment of a non-refundable application fee of such amount as is specified on the Own Art website from time to time; Creative United reserves the right to change the fee at any time.

2.5 Creative United will share the Member's application with the Credit Provider and, in considering the Member's application, Creative United and/or the Credit Provider may use the information contained in the Member's Application Form to carry out credit reference enquiries of credit agencies and to undertake enquiries of the bankruptcy registers, electoral roll registers and Companies House registers.

2.6 We and the Credit Provider will assess all applications against the Criteria for Membership as specified on the Own Art website from time to time. We reserve the right to revise the Criteria at any time.

2.7 If an applicant is unsuccessful, we will inform you in writing, giving reasons.

2.8 If accepted for membership, Members must ensure that all staff involved in processing Own Art loans complete the necessary training and induction modules as determined by Creative United and/or our Credit Provider. Failure to complete any mandatory training modules or updates may lead to a suspension of membership until the training is completed.

2.9 As a pre-condition of admission to the scheme, all Members must electronically accept an agreement between the Credit Provider and the Member in the form required by the Credit Provider ("the Supplier Agreement").

2.10 All Members must promptly complete and submit to Creative United an annual online survey which will be sent via email to the nominated gallery contact, normally in May.

2.11 We reserve the right periodically to review and reassess each Member's participation in the Scheme, to ensure that they continue to meet the standards and Criteria for

Membership and are meeting all their obligations under these Terms and Conditions. If not satisfied that you are in compliance, we will inform you of the reasons, and if you continue to fail to meet our standards we reserve the right to suspend or terminate your Membership at any time.

3. Financial Conduct Authority (“FCA”) Authorisation

3.1 Members of the Scheme which only offer Own Art loans which are repayable by fewer than 12 instalments within 12 months are not required to be regulated by the FCA. However Members wishing to offer Own Art loans which are repayable by more than 12 instalments over a period of time greater than 12 months will be conducting ‘regulated activities’ under the Financial Services Act, and must be authorised by the FCA under the category of limited permission credit brokerage as a minimum (“being authorised”). Failure to have the ‘appropriate level of permission’ from the FCA at all times could result in: -

- a) refusal of entry to the Scheme;
- b) termination of existing Membership;
- c) committing a criminal offence; and
- d) the inability of the Member to carry out any consumer credit business in future.

3.2 We reserve the right to terminate your Membership if your authorisation is revoked or you fail to renew it when it expires. If you are engaging in regulated activities, you must at all times comply with the requirements of authorisation. A guide to fulfilling these requirements has been published by the FCA (see Annex: ‘Being Regulated: A Guide for Consumer Credit Firms’) <http://www.fca.org.uk/your-fca/documents/consumer-credit-being-regulated>.

3.3 Each Member undertaking regulated activities warrants, represents and undertakes to Creative United that any actions carried out under the Scheme by the Member, or the Member’s employees and agents, will be competently performed and of a standard expected of a business carrying out consumer credit business under the Consumer Credit Act.

3.4 Creative United warrants that:

- a) in relation to any credit advertisement the contents of which are provided by Creative United to Members for use under the Scheme are legal, decent, honest and truthful and comply with the Consumer Credit (Advertisements) Regulations 2004 (as amended), the Consumer Credit Directive 2010, and all other relevant codes under the supervision of the Financial Conduct Authority or Advertising Standards Authority;

- b) no documents, material, data or other information provided by Creative United to the Member for use under the Scheme, will infringe any Intellectual Property rights owned by third parties.

4. Credit Terms and Procedures

- 4.1 We hope to support all eligible loan applications, but our capacity to do so will always depend on the level of demand from customers and the availability of public subsidy. In order that we can operate the Scheme effectively within budget, each Member will (at the discretion of Creative United and/or that of our Scheme Partners) be issued a subsidy quota allocation. The value of the quota will be set at the start of each financial year (normally on or around the 1st April) and will vary according to the projected needs of each business, and the number of Members participating in the Scheme. Once this quota has been expended, the Member shall be responsible for funding the full cost of any further loan applications for the remainder of the financial year at the prevailing unsubsidised rate as determined by the Credit Provider under its agreement with Creative United.
- 4.2 Members may request that Creative United review their subsidy quota allocation to facilitate increased sales through the Scheme, should their business need vary significantly from the projection made at the start of the financial year. Any renegotiation of quota allocations will be strictly at the discretion of the Scheme Partners, subject to their resources, and will not be precedential.
- 4.3 The Scheme does not offer credit to businesses, i.e. sole traders, partnerships or companies. Members must ensure that all applications for credit are only completed by individuals (i.e. natural persons).
- 4.4 Loans are not available to customers who have disclosed to a Member in the course of enquiry about the Scheme, that they
 - a) intend to reside abroad or
 - b) intend to relocate abroad for a substantial period of time, or
 - c) are persons domiciled abroad, or
 - d) are persons who are under the age of 18 years of age or
 - e) are non-UK citizens.

If a Member is in any doubt, the Member should raise its concern with the Credit Provider before submitting the loan application.

- 4.5 Loans are available to staff of Members provided that the applicant has the permission of a Company Director or the Gallery manager who must process the loan application.
- 4.6 Loans are repayable by the customer to the Credit Provider by direct debit only, commencing in accordance with the terms of the loan agreement, in equal monthly instalments.

- 4.7 Any loan application must contain the full particulars of the customer in order to identify the customer accurately. A customer may apply for one or more concurrent or consecutive loans under the Scheme to buy one or more Works of Art.
- 4.8 If the Work/s of Art cost more (without taking account of any deposit paid by the customer) than the particular loan available to the customer, the customer must pay the balance of the purchase price to the Member before the goods are released to the customer. If the Member releases the goods before the full price is paid, the Member shall bear the risk of any amount unpaid.
- 4.9 A customer may repay the loan at any time without penalty for early repayment except for any allowance that may be permitted to the Credit Provider by the Consumer Credit (Early Settlement) Regulations 2004.
- 4.10 If a sale of Work/s of Art has been concluded in accordance with these Terms and Conditions, the default, death or bankruptcy of the customer should not affect the Member. The loan agreement will continue to bind the estate of the deceased or bankrupt customer, and his or her personal representatives.
- 4.11 Only authorised and approved current versions of the Credit Provider's loan agreement can be used for the Scheme. The Credit Provider will notify Members in writing of any new issues of the loan agreement from time to time.
- 4.12 A sale will be complete when the loan has been approved and the customer has signed the agreement and direct debit mandate.
- 4.13 The decision of the Credit Provider as to whether to grant or decline a loan application is final and no reasons need be given.
- 4.14 Members must comply with any Operating Instructions and Procedures issued by the Credit Provider from time to time.
- 4.15 Members must comply with the requirements of the Consumer Credit Act 1974 (as amended) including all regulations made thereunder.

5. Loan Subsidy and Fees

- 5.1 Members must pay an annual Membership Fee in advance, of such amount as we may determine. The Fee is subject to review and may be changed from time to time at our sole discretion. We will notify Members of any changes in writing. The Fee is non-refundable if membership ceases for any reason during the Scheme year.
- 5.2 Members will be required to pay the Credit Provider a fee equal to a fixed percentage of the amount of each loan ("the Fee"). The Fee is subject to review and may be changed from time to time at our sole discretion. We will notify Members of any changes in writing.
- 5.3 The Fee will be deducted by the Credit Provider from the loan amount financed under the loan agreement.
- 5.4 The Member may not charge the customer any part of the Fee or any other charge for credit, or charge the customer any amount other than the Total Cash Price of the goods,

plus (where applicable) any delivery or framing charge. To do so may render the loan agreement unenforceable and may also result in termination of membership of the Scheme. If a Member is found to have breached this term, or any of the other Terms and Conditions, we reserve the right to invoice the Member for the full cost of the loan at the unsubsidised rate chargeable by the Credit Provider.

- 5.5 The funding from the Credit Provider, paid or retained, shall be deemed to include Value Added Tax ("VAT") if applicable. Members who are registered for VAT must account to HMRC for any VAT due on each sale in the normal way.
- 5.6 All payments, fees and charges will be calculated and paid in GB pounds sterling.

6. Data Protection

6.1 Each Member and Creative United shall comply with the Data Protection Legislation at all times. In this Clause "Data Protection Legislation" means:

- (i) the UK Data Protection Act 2018;
- (ii) the General Data Protection Regulation as enacted into English law ("GDPR") as revised and superseded from time to time;
- (iii) the Privacy and Electronic Communication Regulations 2003;
- (iv) any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK in respect of any of the foregoing; and
- (v) any other laws and regulations relating to the processing of personal data and privacy which apply and, if applicable, the guidance and codes of practice issued by the relevant data protection or supervisory authority. For the purposes of this Clause the terms "processing" and "personal data" shall be interpreted in accordance with the Data Protection Legislation.

6.2 The Member undertakes that that all processing of customer records and any other processing of personal data carried out by the Member (or third parties on the Member's behalf) under the Scheme shall at all times comply with Data Protection Legislation. The Member is responsible for obtaining all consents and permissions relating to the use of that data and warrants that by processing the same under the Scheme (subject to compliance with Clause 6.1 above) Creative United shall not be in breach of the Data Protection Legislation, nor shall we be infringing on the rights of any third party.

6.3 The Member undertakes that in the event that Creative United and the Member are found to be joint or individual data controllers (and/or data controllers in common) of any personal data pursuant to the Data Protection Legislation the Member will indemnify Creative United and keep Creative United indemnified in respect of all costs and expenses (including but not limited to legal costs and expenses) and all damages (including but not limited to any damages or compensation payable by either party on the advice of their respective legal advisers to compromise or settle any claim) arising out of any and all

actions, claims, and proceedings which may be made or brought against Creative United (whether separately or as joint defendants) relating to or in consequence of the processing of the personal data by the Member (or on the Member's behalf) in breach of Clause 6.1.

- 6.4 Creative United will be the controller of any personal data collected by us from a prospective Member when applying to participate in the scheme. Creative United will process any such data in accordance with the Data Protection Act.
- 6.5 Any personal data collected by us from a prospective member in the course of the application for membership will be held by us and may be shared with the Credit Provider. The personal data will be used to enable the Credit Provider to conduct credit reference, bankruptcy and other relevant inquiries about the Member and subsequently for Scheme administration purposes.
- 6.6 Any personal data subsequently provided to Creative United by Members during their membership of the Scheme will be held by us and may be shared with the Credit Provider.
- 6.7 The legal bases upon which Creative United will process any personal data collected from the Member or prospective member include:
 - 6.7.1 Such processing being necessary for entering into or performing a contract we have entered into with the Member and any obligations which arise under that contract;
 - 6.7.2 Such processing being necessary for the purposes of legitimate interests, on the basis that those interests are not overridden by your rights and freedoms; and
 - 6.7.3 Such processing as is necessary to ensure our compliance with a legal obligation which may require us to process your information, including by disclosing such information to a regulatory body or law enforcement agency.

For further information, please refer to our Privacy Policy which is available on our website at www.ownart.org.uk/privacy-policy.

7. Records and Information

- 7.1 The Member agrees to keep true and accurate books and records relating to all Scheme transactions including amounts received from the customer and the Credit Provider in relation to each loan, customer invoices, the date of each loan and the description of artworks purchased and to make such records available for inspection and copying by Creative United or Creative United's appointed representatives during normal business hours, on reasonable notice.
- 7.2 The Member agrees if Creative United requests to have the Member's books and records relating to business under the Scheme independently examined annually by a recognised, independent examiner approved by Creative United at Creative United's cost; any report shall be made available to both parties to this on request and shall contain an opinion as to whether the loan agreements and financial processes are in accordance with the terms of these Terms and Conditions.

- 7.3 Our duly authorised representatives may from time to time visit any Member without prior notice during working hours to monitor the Member's compliance with these and Conditions. The Member will co-operate fully with the authorised representatives and comply with their reasonable requests.

8. Promotion of the Scheme

- 8.1 Members must use all reasonable endeavours to promote the Scheme using the promotional materials supplied by Own Art.
- 8.2 All descriptions of the Scheme provided or used by the Member and all advertisements, statements and announcements relating to it must be consistent with the Consumer Credit Act (and all regulations made under the Act) and (if applicable) compliant with the FCA guidelines referred to in para 3.2, as well as these Terms and Conditions, and must include the Scheme logo in accordance with Creative United's Brand and Point of Sale Guidelines which are available to download via the Member's area of the Own Art website.

9. Variation of the Terms and Termination of the Scheme

- 9.1 We may from time to time amend these Terms and Conditions as we deem necessary, expedient or convenient for the proper management of the Scheme or to take into account changed circumstances. We will give the Members at least 30 days' written notice of any amendment to these Terms and Conditions.
- 9.2 We may, in our discretion, at any time resolve to terminate the Scheme on 30 days' written notice to Members at any time without any liability to the Members.

10. Complaints

- 10.1 You can complain if you think that:
- 10.1.1 'maladministration' has taken place (for example, if we have delayed, made mistakes in or failed to follow the procedures in our application process); or
 - 10.1.2 we have failed to give you access to information or have given you incorrect advice or information; or
 - 10.1.3 we have not treated you politely; or
 - 10.1.4 we have discriminated against you or not treated you fairly.

- 10.2 However, if your complaint is about our refusal to admit you to membership of the Scheme, we can only look at your application again if:
- 10.2.1 we discover (through dealing with a complaint) that we did not follow the published procedures for assessing your application;
 - 10.2.2 you can show that we have misunderstood a significant part of your application;
or
 - 10.2.3 you can show that we did not take notice of relevant information.
- 10.3 Members cannot make a complaint based on a refusal by the Credit Provider to accept your application based on its financial criteria and procedures.
- 10.4 All complaints should be made by following the Scheme's Complaint Procedure, available upon request from us by emailing info@ownart.org.uk or telephoning 020 7759 1111.

11. Duration and Termination

- 11.1 Membership shall continue in force indefinitely until terminated by either the Member or Creative United giving to the other 30 days written notice, or until terminated by Creative United under Clause 9.2 or Clause 11.2.
- 11.2 In addition to the right of termination set out in Clause 11.1, Creative United may terminate the Membership of a Member by written notice to the relevant Member having immediate effect :
- a) if the Member shall have committed a material or persistent breach of these Terms and Conditions and such breach shall have remained un-remedied for 28 days following the service of a written notice calling upon the Member to remedy the same (if capable of remedy);
 - b) if the Member makes or offers to make any arrangement or composition with the its creditors or if any resolution or petition to wind up the Member or any other company the Member controls, shall be passed or presented (and not vacated within 30 days), otherwise than for the purposes of amalgamation or reconstruction, or if any administrator or administrative receiver is appointed over any of the Member's businesses, undertakings, property, assets or any parts thereof, or the Member cease to carry on business;
 - c) if the Scheme is suspended or wound up; or
 - d) if Creative United has terminated the Member's participation in the Scheme pursuant to these Terms and Conditions.
- 11.3 Termination of Membership or the Scheme as a whole shall be without prejudice to the rights of the parties accrued prior to such termination.
- 11.4 If on termination of individual Membership of the Scheme or the Scheme as a whole (as applicable) any monies are owed by a Member to us, Creative United reserve the right to charge the Member interest (both before and after judgment) on any amounts due to

Creative United and unpaid at the rate of 4% per annum above the Bank of England's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) and/or to set off any sums owed by the Member to Creative United against any sums payable by Creative United to the Member.

11.5 Clauses 6, 13 and 14 shall survive the termination of this Agreement.

11.6 On termination of Membership or the Scheme as a whole (as applicable) the Member will immediately cease to display or use any of the Scheme materials which the Member will return to Creative United or destroy, as Creative United may require.

12. Restriction on Liability

12.1 For the avoidance of doubt, Creative United will not incur any liability to the Member, either during or after termination of Membership or the Scheme as a whole, for any monies owing to the Member by the Credit Provider, by a customer or any other third party.

12.2 In no event shall Creative United incur any liability to the Member or any third party under or in connection with these Terms and Conditions or the Scheme for any consequential or special damages or indirect loss, including loss of profits or sales.

12.3 In no event shall Creative United incur any liability to the Member in the event that Creative United terminates or suspends the Scheme or an individual Membership or varies these Terms and Conditions which Creative United reserves the right to do at any time without giving any reasons.

12.4 Creative United's maximum liability to the Member under or in connection with these Terms and Conditions shall be limited to the total Membership fees paid by the Member in the period of 12 months preceding the relevant event or serious of events giving rise to a claim.

12.5 Nothing in these Terms and Conditions is intended to or shall limit or exclude Creative United's liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation or any other liability which cannot be limited or excluded as a matter of law.

13. Trademarks and other Intellectual Property Rights

13.1 The Own Art 'stamp' logo is a registered trademark owned by Creative United. Other than as permitted by these Terms and Conditions, or with the prior written consent of Creative United, the Member may not use this trade mark (or any name or mark similar to or capable of being confused with the trade mark) or any other trade mark, name or designation associated with the Scheme, or any name under which the Scheme may be marketed.

- 13.2 Member agree not to apply for the registration of any trademark, name or designation associated with the Scheme or any name or designation similar thereto as a trademark or service mark.
- 13.3 Member may during the term of its Membership, use the Own Art trademark and logo on any marketing and promotional material the Member produces regarding the Scheme provided that:
- a) these conform to the Own Art Brand and Point of Sale Guidelines (available to download via the Member's area of the Own Art website or on request from info@ownart.org.uk) *Note: please email info@ownart.org.uk if you would like advice on compliance*
 - b) are true and accurate and properly describe the Scheme features; and
 - c) do not in the opinion of Creative United bring the Scheme into disrepute.
- 13.4 Nothing in these Terms and Conditions shall be construed so as to reserve to the Member any rights, either solely or jointly, in relation to any ideas, know-how, methodologies, Intellectual Property and techniques used by or developed by the Member in the course of being a Member of the Scheme. The rights to the same shall be assigned to Creative United with full title guarantee by the Member and shall thereafter vest in Creative United absolutely.
- 13.5 Creative United shall retain ownership of all Intellectual Property rights of whatever nature created by or arising out of the Scheme, whether registered or not, and in the Scheme documents and material (other than material supplied to the Member which is the property of the Credit Provider) or other materials and data or other information provided to the Member in the context of the Scheme and these Terms and Conditions.
- 13.6 The Member undertakes that the Member will not at any time after termination use the Intellectual Property Rights in any manner whatsoever or claim or assist others to claim any right to use the Intellectual Property Rights.
- 13.7 In these Terms and Conditions, the term 'Intellectual Property Rights' shall mean patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

14. Confidentiality

- 14.1 The Member and Creative United each agrees that it will not at any time divulge any confidential information relating to the other, its business or operations other than as is

necessary to be divulged to the Credit Provider or to the Scheme Partners in connection with the operation of the Scheme.

- 14.2 The restrictions in this Clause 14 shall not apply to any information which is in the public domain or which can be shown to be lawfully received by the receiving party from a third party or other source not under a duty of confidence or which is required to be disclosed by law or any legally binding requirement of any governmental or regulatory authority.

15. Assignment

- 15.1 The Member may not assign or sub-contract any of the Member's rights or obligations under these Terms and Conditions. Creative United may assign or sub-contract its rights or obligations without requiring the Member's consent.

16. General

- 16.1 These Terms and Conditions (together with any other documents referred to in these Terms and Conditions) supersede all previous agreements, contracts, and arrangements whatsoever between the parties and, contains the entire understanding of the parties on the subject. No alteration, amendment or addition to any of these Terms and Conditions shall be valid unless in writing and signed by Creative United.
- 16.2 Any notice required to be given hereunder shall be validly given if in writing and delivered in person or sent by pre-paid first class post to the address for the party to be served as stated on the Application Form submitted by the Member or as subsequently notified in writing from time to time by the Member. Any notice shall be deemed duly served if delivered personally at the time of delivery or if posted on the second day after being put in the post.
- 16.3 No forbearance, waiver or indulgence on the part of Creative United in enforcing these Terms and Conditions shall prejudice its rights hereunder nor shall it be construed as a waiver thereof.
- 16.4 In these Terms and Conditions headings are for convenience only and shall not affect the interpretation of any provision.
- 16.5 In the event that any provision in these Terms and Conditions shall be held by any court or competent authority to be illegal, unenforceable or void, such provision shall be deemed to have been severed or removed from these Terms and Conditions but without prejudice to the remaining provisions of these Terms and Conditions, and the parties shall endeavour to agree such other provisions as shall be lawful and shall approximate as nearly as possible the severed provisions.
- 16.6 No person who is not a party to this shall have any rights under the Contracts (Rights of Third Parties) Act 1999 in connection with these Terms and Conditions.
- 16.7 Nothing in these Terms and Conditions shall be construed so as to imply any relationship of agent, partner or employee between the parties hereto.

- 16.8 The Member shall bear its own costs of professional advice in relation to the terms and effects of this these Terms and Conditions.
- 16.9 The Member and Creative United shall use their best endeavours to negotiate and in good faith settle amicably any dispute that may arise out of this these Terms and Conditions. If any dispute cannot be settled amicably the matter shall be referred for Mediation to the Centre for Dispute Resolution. The costs of the Mediator and facilities shall be borne equally between the parties unless otherwise resolved within the Mediation. The costs of professional advice in relation to the Mediation shall be borne by the party requiring the advice.
- 16.10 These Terms and Conditions shall be governed by and construed in accordance with the laws of England.

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