



## Own Art Scheme

### 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) incorporated and registered in England and Wales whose company number is 08280539 and registered office is c/o Buzzacott LLP, 130 Wood Street, London, United Kingdom, EC2V 6DL.

By applying to be a Member of the Scheme, applicants agree to be bound by these Terms and Conditions.

#### 1. The Scheme and Interpretation

1.1 The Own Art Scheme is a UK-wide initiative supported by Arts Council England, Arts Council of Wales, 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 or us**”). The Scheme provides approved retailers/galleries and online retailers/galleries of contemporary art and craft (“**Members**”) with the ability to offer to introduce customers to providers of interest-free loans to enable them to purchase works of art. We do not currently support applications from individual artists.

1.2 The purpose of the Scheme is to introduce prospective purchasers of works of art (“**Customers**”) to a finance provider for that purpose. The Scheme aims to support living artists and craft-makers by making the purchase of their work more accessible to a wide range of Customers across the UK.

1.3 In agreement with our funding partners, the primary beneficiaries of the Scheme will be artists (and not the Member), with the Customers also being important beneficiaries. Working in partnership with our Members, the Scheme aims to support diverse artists to sustain their creative practice, particularly those currently underrepresented in the market.

1.4 The Scheme is run by Creative United, currently in partnership with Mitsubishi HC Capital UK PLC (trading as Novuna Consumer Finance) incorporated and registered in England and Wales with company number is 01630491 and whose registered office is Novuna House, Thorpe Road, Staines-Upon-Thames, England, TW18 3HP, which provides the loans to customers (the “**Credit Provider**”).

1.5 The Own Art ‘stamp’ logo is a registered trade mark of Creative United under UK trade mark registration number UK00003308815 (the “**Trade Mark**”).

1.6 For the purposes of the Scheme, “**Works 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 (including paintings, drawings, sculptures, photographic, and mixed-media installations, artist-made film and video and work in digital media).

1.7 Craft items (including ceramics, glasswork, textiles, metalwork, woodwork and jewellery and unique items of designer-made furniture) may be purchased using the Scheme providing that the work can be attributed to named artist (or artists) and made by hand. Machine assistance is acceptable where it is not possible for the work to be created by hand.

1.8 Original prints or multiples in limited editions may be purchased using the scheme. However, only works published in an edition up to a limit of 150 may be purchased using the Scheme. These

must be made by the artists themselves, the edition itself must be defined as the work as opposed to a reproduction of another piece conceived in a different medium.

1.9 **“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; this includes ‘hand embellished’ reproduction prints. 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.

1.10 Interpretation:

1.10.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.10.2 A reference to legislation or a legislative provision:

1.10.2.1 is a reference to it as amended, extended or re-enacted from time to time; and

1.10.2.2 includes all subordinate legislation made from time to time under that legislation or legislative provision.

1.10.3 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.10.4 A reference to writing or written excludes fax but not email.

## **2. Applications for Membership**

2.1 Scheme Membership (“Membership”) is open to sole traders, partnerships, companies or charities operating in England, Wales, 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 aged 18 years of age or over.

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; and
- 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, for purposes including the receipt of payments from the Credit Provider.

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 without notice.

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 without notice.

2.7 If an applicant is unsuccessful, we will inform the applicant in writing, giving reasons. The decision of Creative United in this regard is final and binding, and Creative United reserves the sole right to consider any further applications made by the same applicant in accordance with the provisions of clause 10.2.

2.8 If accepted for Membership, Members must ensure that all staff involved in processing loans complete the necessary training and induction modules as determined by Creative United and/or our Credit Provider from time to time. 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 by Creative United 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 we are 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. Compliance with financial services regulation**

3.1 Members of the Scheme which only offer to introduce loans which meet the following criteria will be able to rely on an exclusion from carrying on regulated credit broking ("**Excluded Activity**"):

3.1.1 repayable by up to 12 instalments within 12 months; and

3.1.2 without any interest or other charges.

3.2 Members wishing to offer loans which do not meet the criteria for Excluded Activity may be conducting regulated credit broking. In order to avoid breaching the general prohibition under section 19 of the Financial Services and Markets Act 2000, Members wishing to introduce such loans (which would not be Excluded Activity) must either have:

3.2.1 the required credit broking authorisation from the Financial Conduct Authority ("**FCA**"); or

3.2.2 be exempt (such as from being able to carry out regulated credit broking as an appointed representative).

3.3 Failure to have the appropriate permission from the FCA, or be exempt, at all times could result in amongst other things:

- 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.

3.4 If you are introducing loans which are not Excluded Activity, then we reserve the right to terminate your Membership if you are no longer FCA authorised or exempt. If you are engaging in regulated credit broking, you must at all times comply with:

3.4.1 all applicable legislation; and

3.4.2 rules and guidance issued by the FCA from time to time.

(together “**the Rules**”).

3.5 Each Member undertaking regulated credit broking 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 Rules.

3.6 Creative United agrees 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 Rules and relevant codes under the supervision of the FCA, the Advertising Standards Authority or any other competent 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 (as defined in clause 13.1) 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. The Member understands that Creative United can only support loan applications to the extent such loan subsidies are covered by funding that the Scheme Partners make available. 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 in a material way 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, which includes sole traders, partnerships or companies. Members must ensure that all applications for credit are only completed by individuals (i.e. natural persons) aged 18 years or over.

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 outside the UK;

- b) intend to relocate outside the UK for a substantial period of time;
- c) are persons domiciled abroad outside the UK;
- d) are persons who are under the age of 18 years; or
- e) are non-UK citizens.

If a Member is in any doubt, the Member should raise its concern(s) 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 of such Member who must process the loan application in good faith. In this instance, loan applications must be completed by someone other than the customer.

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 between the customer and the Credit Provider (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 in order 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 Work/s of Art are released to the customer. If the Member releases the Work/s of Art before the full price is paid, the Member shall bear the sole risk of any amount unpaid and shall have no right of recourse under any circumstances from any of Creative United, the Credit Provider or the Scheme Partners.

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 Rules.

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 under the Scheme should only complete once:

- 4.12.1 the loan has been approved;
- 4.12.2 the customer has signed the Loan Agreement and direct debit mandate; and
- 4.12.3 any other requirements set out by the Credit Provider have been fulfilled.

4.13 The decision of the Credit Provider as to whether to grant or decline a loan application is binding and final and no reasons need to 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 Rules.

## 5. Loan Subsidy and Fees

5.1 Members must pay an annual fee to Creative United ("**the Membership Fee**") in advance to Creative United, of such amount as notified to the Member when they join the Scheme. The Membership Fee is subject to review and may be changed from time to time at Creative United's sole discretion. We will notify Members of any changes to the Membership Fee in writing. If Membership ceases for any reason then the Membership Fee is non-refundable.

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 Provider Fee**"). The Provider Fee is subject to review and may be changed from time to time at our sole discretion. We will notify Members of any changes to the Provider Fee in writing.

5.3 The Provider Fee will be deducted by the Credit Provider from the loan amount financed under the Loan Agreement.

5.4 The Member shall not charge the customer any part of the Membership Fee or the Provider Fee, any other charge for credit, or charge the customer any amount other than the total cash price of the Work/s of Art subject to the Loan Agreement, plus (where applicable) any delivery or framing charge. To do so may render the Loan Agreement unenforceable and may also result in termination of the Member's Membership of the Scheme. If a Member is found to have breached this clause 5.4, 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 made under the Scheme.

5.6 All payments, fees and charges will be calculated and paid by the Member in GB pounds sterling.

5.7 Where Creative United reduces cost of the Provider Fee using the publicly funded subsidy ("**the Subsidy**"), any breach of these Terms and Conditions (including, but not limited to, selling ineligible items) will result in the Member having to repay to us the amount of the Subsidy.

## 6. Data Protection

6.1 Each Member and Creative United shall comply with the Data Protection Legislation at all times. In this clause 6 the following definitions shall apply:

- (i) Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation;
- (ii) Data Protection Legislation: (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data; (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Provider is subject, which relates to the protection of personal data;
- (iii) Domestic Law: the law of the United Kingdom or a part of the United Kingdom;
- (iv) EU GDPR: the General Data Protection Regulation ((EU) 2016/679);
- (v) EU Law: the law of the European Union or any member state of the European Union; and
- (vi) UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

6.2 The Member undertakes 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.

6.3 The Member is responsible for obtaining all consents and permissions relating to the use of that Personal 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.

6.4 The Member must ensure that it informs any customers under the Scheme that it will process the customer's Personal Data, the Credit Provider and/or the Scheme Partners, for the purposes of compliance by Creative United with any terms of funding it enters into with the Scheme Partners.

6.5 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 liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Creative United arising out of or in connection with 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.

6.6 Creative United will be the Controller of any Personal Data collected by us from a prospective Member when applying to participate in the Scheme.

6.7 Creative United will process any such Personal Data in accordance with the Data Protection Legislation and its privacy policy.

6.8 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.

6.9 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.

6.10 The legal bases upon which Creative United will process any Personal Data collected from the Member or prospective Member are set out in our privacy policy which is available on our website.

## **7. Records and Information**

7.1 The Member agrees to keep true, accurate and up to date 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 all Works of Art and any other artworks purchased and upon request, 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 Creative United and such examiner 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 premises of a Member without prior notice during working hours to monitor the Member's compliance with these Terms and Conditions. The Member will co-operate fully with the authorised representatives and comply with their reasonable requests.

7.4 The Member will provide to Creative United upon request, information and statistics relating to (i) the type and number of Work/s of Art (and any other contemporary art and craft) sales achieved per annum; (ii) monthly sales reports in relation to the type and number of Work/s of Art (and any other contemporary art and craft) sold; and (iii) any other information that Creative United requires from the Member, including, for example, in relation to the number of artists, galleries and customers involved in the Scheme via the Member, and the impact of the Scheme on the same.

## **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 Rules, as well as these Terms and Conditions, and must include the Trade Mark 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.

8.3 The Member consents to any publicity about their Membership and association with the Scheme as Creative United may require from time to time, including on the web and social media channels.

8.4 The Member must use logos as directed by Creative United, appropriately on all published material including printed and online material, and in strictly in accordance with Creative United's instructions.

## **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, 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 by following the procedure set out in clause 10.4, 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);

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 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 their 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](mailto: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 Without affecting any other right or remedy available to it, Creative United may terminate the Membership of a Member with immediate effect by giving written notice to the relevant Member having:

11.2.1 if the Member commits a material or persistent breach of any term of these Terms and Conditions and (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;

11.2.2 if the Member takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 11.2(b);

11.2.3 if any of the events in clause 11.2(b) take place in relation to any other company the Member controls;

11.2.4 if the Member suspends or ceases, or threatens to suspend or cease, carrying on business;

11.2.5 if the Member's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to these Terms and Conditions is in jeopardy;

11.2.6 if the Member (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation;

11.2.7 there is a change of control of the Member within the meaning of section 1124 of the Corporation Tax Act 2010;

11.2.8 if the Member provides any information to Creative United that is wrong or misleading, either by mistake or because it is trying to mislead Creative United during the application process for Membership, or whilst it is a Member;

11.2.9 if the Member acts in such a way that Creative United believes it has significantly affected the Scheme, or is likely to harm Creative United or the Scheme Partners' reputation or it is in Creative United's discretion necessary to protect public money;

11.2.10 if the Scheme is suspended or wound up; or

11.2.11 if Creative United has terminated the Member's participation in the Scheme pursuant to any other terms these Terms and Conditions.

11.3 Any provision of these Terms and Conditions that expressly or by implication is intended to come into or continue in force on or after termination of Membership or the Scheme, shall remain in full force and effect. For the avoidance of doubt, clause 6 (*Data Protection*), 13 (*Trademarks and other*

*Intellectual Property Rights*) and 14 (*Confidentiality*) shall survive the termination of Membership or the Scheme.

11.4 Termination of Membership or the Scheme shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of these Terms and Conditions which existed at or before the date of termination.

11.5 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:

11.5.1 charge the Member interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% per annum above the Bank of England's base rate from time to time (but at 4% a year for any period when that base rate is below 0%), 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

11.5.2 at any time, without notice to the Member, set off any liability of the Member to Creative United against any liability of Creative United to the Member, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under these Terms and Conditions. Any exercise by Creative United of its rights under this clause shall not limit or affect any other rights or remedies available to it under these Terms and Conditions or otherwise.

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, in accordance with Creative United's instructions.

## **12. Limitation of Liability**

12.1 References to liability in this clause 12 include every kind of liability arising under or in connection with these Terms and Conditions including liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise.

12.2 Nothing in these Terms and Conditions limits or excludes any liability which cannot legally be limited or excluded, including liability for:

12.2.1 death or personal injury caused by negligence;

12.2.2 fraud or fraudulent misrepresentation; or

12.2.3 any other liability which cannot legally be limited or excluded.

12.3 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.

12.4 Subject to clause 12.2, Creative United shall not incur any liability to the Member or any third party under or in connection with these Terms and Conditions or the Scheme for the following typed of loss:

12.4.1 wasted expenditure;

12.4.2 loss of profits;

12.4.3 loss of sales or business;

12.4.4 loss of agreements or contracts;

12.4.5 loss of anticipated savings;

12.4.6 loss of use or corruption of software, data or information;

12.4.7 loss of or damage to goodwill; and

12.4.8 indirect, special or consequential loss.

12.5 Subject to clause 12.2, Creative United shall not 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.

12.6 Subject to clause 12.2, Creative United's total aggregate liability to the Member under or in connection with these Terms and Conditions shall not exceed the total Membership Fees paid by the Member in the period of twelve (12) months preceding the relevant event or series of events giving rise to a claim.

12.7 This clause 12 shall survive termination of the Contract.

### **13. Trademarks and other Intellectual Property Rights**

13.1 In these Terms and Conditions, the term "**Intellectual Property Rights**" shall mean patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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.

13.2 Other than as permitted by these Terms and Conditions, or with the prior written consent of Creative United, the Member may not use the 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.

13.3 The Member agrees not to apply for the registration of any trade mark, name or designation associated with the Scheme or any name or designation similar thereto as a trade mark or service mark.

13.4 The Member may during the term of its Membership, use the Trade Mark on any marketing and promotional material the Member produces regarding the Scheme provided that such marketing and promotion material:

13.4.1 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](mailto:info@ownart.org.uk)) *Note: please email [info@ownart.org.uk](mailto:info@ownart.org.uk) if you would like advice on compliance*

13.4.2 are true and accurate and properly describe the Scheme features; and

13.4.3 do not in the opinion of Creative United bring the Scheme, Creative United or the Scheme Partners into disrepute.

13.5 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 Intellectual Property Rights used by or developed by the Member in the course of being a Member of the Scheme (the "**Created IPRs**"). The Member assigns to Creative United, with full title guarantee, title to and all present and future rights and interest in the Created IPRs, or shall procure that the first owner of the Created IPRs assigns them to Creative United on the same basis.

13.6 If requested to do so by Creative United, the Member shall, without charge to Creative United, execute all documents and do all such acts as Creative United may require to perfect the assignment under clause 13.5, or shall procure that the owner of the Created IPRs does so on the same basis.

13.7 Creative United shall grant to the Member a licence of the Created IPRs during the Member's Membership to enable the Member to operate under the Scheme.

13.8 Creative United shall retain ownership of all Intellectual Property Rights of whatever nature created by or arising out of the Scheme, 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.

13.9 The Member undertakes that it will not at any time after termination of its Membership or the Scheme, use the Created IPRs or the Intellectual Property Rights described within clause 13.8 in any manner whatsoever or claim or assist others to claim any right to use the same.

#### **14. Confidentiality**

14.1 The Member and Creative United each undertake that they shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14.3.

14.2 In this clause 14, the term "**Representatives**" shall mean in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

14.3 The provisions of this clause 14 shall not apply to any confidential information that:

14.3.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 14);

14.3.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

14.3.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or

14.3.4 the parties agree in writing is not confidential or may be disclosed.

14.4 Each party may disclose the other party's confidential information:

14.4.1 to its Representatives who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Terms and Conditions. Each party shall ensure that its Representatives to whom it discloses the other party's confidential information comply with this clause 14;

14.4.2 as is necessary to be disclosed to the Credit Provider or to the Scheme Partners in connection with the operation of the Scheme; and

14.4.3 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.5 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Terms and Conditions.

#### **15. Assignment and other dealings**

15.1 The Member may not assign, transfer, mortgage, charge sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Terms and Conditions.

15.2 Creative United may at any time, assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under these Terms and Conditions without the Member's consent.

## **16. Anti-bribery and anti-corruption**

16.1 The Member shall at all times:

16.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and the FCA's Financial Crime Guide (**Relevant Requirements**);

16.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

16.1.3 comply with the Creative United ethics, anti-bribery and anti-corruption policies available to view on the Creative United website as Creative United may update them from time to time (**Relevant Policies**);

16.1.4 establish, maintain and enforce its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and clause 16.1.2;

16.1.5 notify Creative United (in writing) if it becomes aware of any breach of clause 16.1.1 or clause 16.1.2, or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with the performance of these Terms and Conditions;

16.2 The Member shall ensure that any of its agents, consultants, contractors, subcontractors or other persons engaged in performance of the Member's obligations under these Terms and Conditions do so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Member in this clause 16 (**Relevant Terms**). The Member shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Creative United for any breach by such persons of any of the Relevant Terms.

16.3 Breach of this clause 16 shall be deemed a material breach under clause 11.2(a).

16.4 For the purpose of this clause 16, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

## **17. Anti-slavery and human trafficking**

17.1 In performing its obligations under these Terms and Conditions, the Member shall:

17.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (**Anti-Slavery Laws**) including but not limited to the Modern Slavery Act 2015;

17.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;

17.1.3 include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 17;

17.1.4 notify Creative United as soon as it becomes aware of any actual or suspected breach of clause 17.1.1 and clause 17.1.2; and

17.1.5 maintain a complete set of records to trace the supply chain of all purchases and sales made by the Member in relation to the Scheme; and permit Creative United and its third party representatives to inspect the Member's premises, records, and to meet the Member's personnel to audit the Member's compliance with its obligations under this clause 17.

17.2 The Member represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

17.3 Breach of this clause 17 shall be deemed a material breach under clause 11.2(a).

## **18. Diversity and inclusion**

18.1 The Member must comply with:

18.1.1 all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise) including but not limited to the Equality Act 2010;

18.1.2 any other requirements and instructions which Creative United reasonably imposes in connection with any equality obligations imposed on Creative United at any time under applicable equality law;

18.1.3 take all necessary steps, and inform Creative United of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation; and

18.1.4 at all times comply with the provisions of the Human Rights Act 1998 in the performance of these Terms and Conditions. The Member shall also undertake, or refrain from undertaking, such acts as Creative United requests so as to enable Creative United to comply with its obligations under the Human Rights Act 1998.

18.2 The Member must follow best practice in having appropriate and effective policies and procedures in place concerning equality and diversity, harassment and bullying and in complying with those policies and procedures, to;

18.2.1 have an equal opportunities policy in place at all times and act at all times without distinction;

18.2.2 adhere to all relevant legal obligations relating to offering internships;

18.2.3 ensure that the Member's salaries, fees and subsistence arrangements are as good as or better than those agreed by any relevant trade unions and employers' associations;

18.2.4 maintain all main financial records including profit and loss accounts, management statements, personnel and payroll records for all of its staff for seven years post-termination. The Member must complete all statutory returns for employees and make all relevant payments to cover their pensions and salary deductions, such as income tax and National Insurance contributions;

18.2.5 maintain adequate insurance at all times and if asked, supply copies of such insurance policies to Creative United. This includes employee and public liability insurance and insurance that covers the full replacement value of any Works of Art and associated goods/services that you have sold to Customers; and

18.2.6 provide a safe and inclusive workplace environment.

18.3 The Member must ensure that it has in place at all times and acts in accordance with, appropriate and effective disciplinary, grievance and whistle-blowing policies whereby its employees

may raise in confidence concerns about possible malpractice without fear of victimisation, discrimination or disadvantage.

18.4 The Member must use reasonable endeavours to (i) support diverse contemporary artists and craft makers representing a wide range of creative practice, and (ii) ensure a wide range of Work/s of Art are sold.

18.5 It is a requirement of the Scheme that all Members must respond to Creative United's annual Own Art Member Survey. The Member must provide or facilitate the direct collection of, subject to Data Protection Legislation, data and information relating to (i) the artists' ethnicity, heritage, age, career stage, geography/location, and socio-economic background; (ii) the curatorial focus/selection policy of the Member; and (iii) the geography/location of (a) the Member and/or relevant gallery, and (b) the buyer of the Work/s of Art.

18.6 Creative United is under an obligation to do the following with the Scheme Partners: establish a robust 'social return on investment' methodology and values framework that will allow better evaluation of the impact of the Scheme on the livelihoods of visual artists through increased sales, training and skills development and other business support services offered by Creative United to artists and visual arts enterprises. The Member shall use reasonable endeavours to assist Creative United with complying with this obligation.

18.7 The Member will provide to Creative United upon request, information and statistics relating to the Member's compliance with this clause 18.

## **19. Environmental responsibility**

19.1 The Member shall:

19.1.1 follow and comply with any advice or guidance issued by Creative United on environmentally responsible practice;

19.1.2 assist Creative United with gathering data on environmental impact by providing us with information relating to the Member's environmental issues, policies, and procedures, upon our reasonable request (including completing any surveys we issue to you). Creative United reserves the right to publish such information, subject to Data Protection Legislation.

## **20. Additional obligations**

20.1 As Creative United is in receipt of public funding granted to us by the Scheme Partners (or any other public body), we are required to ensure that all Members comply with certain requirements relating to governance, environmental responsibility, equality, diversity and inclusion. Therefore, in addition to the obligations set out elsewhere within these Terms and Conditions, the Member shall:

20.1.1 not, at any time, work with any organisations proscribed under the Terrorism Act 2000 - <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2/proscribed-terrorist-groups-or-organisations-accessible-version>. A breach of this provision constitutes a material breach under clause 11.2(a);

20.1.2 comply with any laws or regulations in relation to 'sanctioned' countries, organisations and/or individuals which may be in force at any time during the Term – Information on the UK Sanctions Regime can be found at: <https://gov.uk/government/collections/uk-sanctions-regimes-under-the-sanctions-act>. A breach of this provision constitutes a material breach under clause 11.2(a);

20.1.3 take all reasonable steps to ensure the safety of any children and adults at risk it will work with. The Member must follow best practice in having appropriate policies and procedures in place to ensure the protection of children, young people and vulnerable adults and in complying with those

procedures, which will include procedures to check backgrounds and disclosures of all employees, volunteers, trustees, partners or contractors who will supervise, care for or otherwise have significant direct contact with children and adults at risk with the “**Disclosure and Barring Service** (formerly the Criminal Records Bureau)”. In this clause 20.1.3, “**Disclosure and Barring Service**” means: an executive agency of the UK Home Office that provides access to details of spent and unspent criminal convictions to employers and organisations engaging volunteers in order to assist them to assess the suitability of an individual for work which involves a position of trust, including work with children and vulnerable adults; and

20.1.4 have a consultation with Creative United at a mutually agreed time and place, to discuss the areas in which the Member may need help and support in relation to the Scheme and its purpose.

## **21. Freedom of Information**

21.1 The following definitions shall apply in this clause 21:

21.1.1 “**Request for Information**” means a request for information or an apparent request under the FOIA or the Environmental Information Regulations;

21.1.2 “**EIRs**” means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations; and

21.1.3 “**FOIA**” means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

21.2 The Member acknowledges that the Scheme Partners are subject to obligations under the FOIA and EIRs. The Member will provide all necessary assistance and cooperation as reasonably requested by Creative United to enable Creative United to comply with its obligations to the Scheme Partners in relation to the FOIA and EIRs.

21.3 As a company in receipt of public funding granted to us by the Scheme Partners, we may be required to supply information to the Scheme Partners or in response to a Request for Information received by the Scheme Partners from members of the public on request, without consulting or obtaining consent from the Member. This potentially includes any information which relates to the Member’s business and information the Member will provide to us pursuant to these Terms and Conditions. We shall take reasonable steps to notify you of a Request for Information (in accordance with the Cabinet Office’s Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for us to do so but (notwithstanding any other provision in these Terms and Conditions) we shall be responsible for determining in our absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

21.4 We will not be liable for any loss, damages or expenses whatsoever that the Member may suffer from our disclosure of information to the Scheme Partners under the FOIA and/or the Environmental Information Regulations.

## **22. General**

22.1 These Terms and Conditions constitute the entire agreement between the parties. Each party acknowledges that in entering into these Terms and Conditions, it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms and Conditions.

22.2 No variation to any of these Terms and Conditions shall be effective unless it is in writing and signed by Creative United (or Creative United's authorised representatives).

22.3 Notices.

22.3.1 Any notice given to a party under or in connection with these Terms and Conditions shall be in writing and shall be:

22.3.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service (a) in the case of Creative United, at its registered office (if a company), and (b) in the case of the Member, the address stated on the application form for Membership submitted by the Member or as subsequently notified in writing from time to time by the Member; or

22.3.1.2 if to be served on Creative United, sent by email to the following: info@creativeunited.org.uk;

22.3.1.3 If to be served on the Member, sent by email to the email address stated on the application form for Membership submitted by the Member or as subsequently notified in writing from time to time by the Member.

22.3.2 Any notice shall be deemed to have been received:

22.3.2.1 if delivered by hand, at the time the notice is left at the proper address;

22.3.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

22.3.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

22.3.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22.4 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

22.5 In these Terms and Conditions headings are for convenience only and shall not affect the interpretation of any provision.

22.6 If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Terms and Conditions. If any provision of the Terms and Conditions is deemed deleted under this clause 22.6, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22.7 Unless they expressly state otherwise, these Terms and Conditions do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms and Conditions. The rights of the parties to rescind or vary these Terms and Conditions are not subject to the consent of any other person.

22.8 Nothing in these Terms and Conditions is intended to, or shall be deemed to, establish any partnership or joint venture or relationship of employment between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

22.9 The Member shall bear its own costs of professional advice in relation to the terms and effects of these Terms and Conditions.

22.10 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 these Terms and Conditions. If any dispute cannot be settled amicably the matter shall be referred for mediation to the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 working days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to **CEDR**. If there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 14 working days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them. Unless otherwise agreed, the mediation will start not later than 28 working days after the date of the ADR notice. 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. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

22.11 These Terms and Conditions, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

22.12 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms and Conditions or their subject matter or formation.

*Last updated: March 2026*