

**COMMERCIAL LICENCE**

between

**SCRAN** (as described in the conditions attached to and forming part of this Form (the "**Conditions** ")  
Contact Details: 17 Kittle Yards, Causewayside, Edinburgh EH9 1PJ  
Tel: +44 (0)131 662 1211 Fax: +44 (0)131 662 1511 E-mail: [scran@scran.ac.uk](mailto:scran@scran.ac.uk)

and

**User:**  
Contact  
Tel No: Fax:  
E-mail: Website:

**Licensed Images:**

**Permitted Purpose:**

**Territory:**

**Licence Fee:**

**Start Date:**

**Licence Period:**

The User requires use of certain images (the Licensed Images) in the SCRAN Database (as defined in the Conditions). SCRAN has agreed to grant a licence to the User in relation to the Licensed Images for the benefit of the User in the terms set out in the Conditions and in this Application Form (together "**this Agreement**").

Please note that this Agreement sets out the rights granted to the User and the limitations imposed upon the User in relation to use of the Licensed Images. In particular:-

- The User may only use the Licensed Images for the Permitted Purpose in the Territory and for no other purpose and in no other jurisdictions whatsoever and such use is only for the Licence Period. Permission to use the Licensed Images for any further purposes, in additional jurisdictions or for a further period may be granted upon payment of a further fee, which must be paid in full before such further use.
- The User must not make the Licensed Images available to any party other than as may be permitted in the Permitted Purpose.
- There is no right to use the Licensed Images at all unless the relevant Licence Fee has been paid.
- The User may permit its employees and those persons specified within the Permitted Purpose to use the Licensed Images and is responsible for ensuring that all of such persons comply with this Agreement.

The User hereby agrees to the terms and conditions of this Agreement	SCRAN hereby agrees to the terms and conditions of this Agreement
Print Name of User's Signatory: .....	Print Name of SCRAN's Signatory: .....
Position: .....	Position .....
Signature: .....	Signature: .....

## **CONDITIONS:**

### **1. DEFINITIONS**

In these Conditions the words and expressions listed below have the following meanings:-

"Application Form"	means the application form completed and signed by the User and attached to these Conditions;
"Commencement Date"	the commencement date set out in the Application Form;
"Intellectual Property Rights"	patents, registered designs, trade marks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, know-how, domain names, trade secrets, confidential information and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;
"Licence"	the licence granted to the User in respect of the Licensed Images pursuant to clause 2;
"Permitted Individuals"	any employees of the User and any other parties specified within the Permitted Purpose;
"Licence Period"	the licence period set out in the Application Form;
"Licensed Images"	the material contained in and forming part of the SCRAN Database as set out in the Application Form;
"Permitted Purpose"	the purpose or purposes set out in the Application Form;
"SCRAN"	SCRAN Limited, a company incorporated in Scotland under the Companies Acts with registered number 163518 and registered office at 12 Hope Street, Edinburgh EH2 4DB;
"SCRAN Database"	means the database of historical and cultural images, sounds, movies and learning resources owned by or licensed to SCRAN;
"SCRAN Group"	SCRAN, SCRAN Trust and any other companies forming part of the SCRAN group of companies from time to time;
"SCRAN Trust"	the SCRAN Trust, a company limited by guarantee, incorporated in Scotland under the Companies Acts with registered number SC166833 and having its registered office at 12 Hope Street, Edinburgh EH2 4DB, being the parent company of SCRAN;
"Territory"	the territory set out in the Application Form; and
"User"	the licensed user set out in the Application Form.

### **2. LICENCE**

- 2.1 The SCRAN Database and all Intellectual Property Rights therein are owned by or licensed to SCRAN.
- 2.2 The User shall not use or exploit the Licensed Images or any part thereof save in accordance with this Agreement.
- 2.3 SCRAN grants to the User throughout the term of this Agreement a non-exclusive, non-transferable licence ("**Licence**") to allow the User to use the Licensed Images in the Territory for the Permitted Purpose and for the Licence Period only.
- 2.4 The User is at all times responsible for all use of the Licensed Images by the Permitted Individuals and must ensure that such persons are aware of and comply with the terms of this Agreement.
- 2.5 The User may not :
  - 2.5.1 sell, resell, license, transmit or otherwise make the licensed Images or any part thereof available in any manner or on any media to any third party other than the Permitted Individuals;
  - 2.5.2 use the Licensed Images or any part thereof for any purpose other than for the Permitted Purpose;
  - 2.5.3 use the Licensed Images or any part thereof outwith the Territory; or
  - 2.5.3 use the Licensed Images or any part thereof for any longer than the Licence Period

unless the User has been granted prior written consent by SCRAN. If the User applies to SCRAN for such consent, the parties shall discuss the terms on which SCRAN may make available all or any part of the Licensed Images and/or allow such use, including the scope of the licence and the level of fee payable to SCRAN.

### **3. LICENCE FEE**

- 3.1 A fee is payable to obtain the Licence.
- 3.2 The User's right to use of the Licensed Images or any part thereof as set out in Clause 2.3 above is conditional on payment. On or before the Commencement Date, the User must pay to SCRAN such licence fee as is set out in the Application Form.
- 3.3 If the User fails to pay SCRAN any sum due pursuant to the Agreement, SCRAN will be entitled to charge the User interest on the amount unpaid from the due date for payment at the annual rate of [4%] above the base lending rate from time to time of the Royal Bank of Scotland plc, accruing on a daily basis until payment is made, whether on or before any judgement. SCRAN reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

### **4. DELIVERY**

SCRAN shall make the Licensed Images available to the User using on-line systems and other packaged media.

### **5. ACCURACY OF INFORMATION**

- 5.1 SCRAN reserves the right at any time in its sole discretion to change the content, presentation, user facilities or availability of any part of the SCRAN Database (including without limitation the Licensed Images) and to make changes in any software used to make the SCRAN Database or any part thereof available to the User.
- 5.2 While SCRAN has no reason to believe that there are any inaccuracies or defects in the information, images, diagrams, pictures and sounds contained in the SCRAN Database, SCRAN makes no representation nor gives any warranty (whether express or implied) with regard to the information, images, diagrams, pictures and sounds contained in the SCRAN Database including (without limitation) the fitness of such information or part for any purposes whatsoever and SCRAN accepts no liability for loss suffered or incurred by the User as a result of the User's reliance on the SCRAN Database.

### **6. LIABILITY**

- 6.1 Subject to Clauses 5.2 and 6.2, SCRAN's entire liability under this Agreement in respect of any act, omission, breach or negligence shall be limited to the amount of the licence fee paid by the User.
- 6.2 SCRAN's liability for death or personal injury resulting from the negligence of SCRAN or its employees shall not be limited.
- 6.3 SCRAN shall not be liable for any indirect or consequential loss or damage, loss of profits, goodwill, contract, savings or loss or damage suffered by the User.

### **7. USER'S OBLIGATIONS**

- 7.1 The User warrants and agrees with SCRAN that:-
  - 7.1.1 all rights and title in and to the SCRAN Database (including without limitation the Licensed Images) and all Intellectual Property Rights in, derived from and relating to the SCRAN Database are expressly reserved to SCRAN and its licensors;
  - 7.1.2 the User shall immediately provide full particulars to SCRAN in the event that the User becomes aware of any actual or threatened claims by any third party in connection with the Licensed Images;
  - 7.1.3 other than as may be specifically consented to by SCRAN pursuant to Clause 2.5, the User shall not use or exploit the Licensed Images outwith the Territory, use or exploit the Licensed Images for any purpose other than the Permitted Purpose or use or exploit the Licensed Images beyond the Licence Period;
  - 7.1.4 the User shall not sell, resell, license, transmit or otherwise make available, the SCRAN Database or any information or materials contained within the SCRAN Database in any manner or in any media to any party other than as may be permitted within the Permitted Purpose in respect of the Licensed Images and provided that this is within the Territory and within the Licence Period;
  - 7.1.5 the User must ensure that no third party retains a copy of the Licensed Images on any electronic storage medium unless this is within the Territory and the Licence Period and is permitted by the Permitted Purpose;
  - 7.1.6 it will ensure that all the Permitted Individuals are aware of and comply with the terms of this Agreement, will immediately bring to SCRAN's attention any improper

or unlawful use of the SCRAN Database or any Intellectual Property Rights belonging to any part of the SCRAN Group that comes to the attention of the User and will at its own cost, immediately take all steps required by SCRAN in order to protect and defend SCRAN's rights and property.

- 7.2 The User shall indemnify SCRAN and SCRAN Trust on demand and keep SCRAN and SCRAN Trust fully indemnified from and against all actions, proceedings, claims, demands, costs and damages arising directly or indirectly as a result of breach or non-performance by the User of the obligations under this Agreement.

## **8. TERM AND TERMINATION**

- 8.1 This Agreement shall commence on the Commencement Date and shall continue for the Licence Period unless earlier terminated in accordance with this clause 8 or unless the licences in favour of SCRAN to use the SCRAN Database terminate.
- 8.2 SCRAN may terminate this Agreement by giving one month's notice in writing to the User at any time.
- 8.3 The User may terminate this Agreement by giving one month's written notice to SCRAN.
- 8.4 Either party may terminate this Agreement forthwith by written notice to the other party if the other party is in breach of any obligation on it hereunder and, in the case of a breach capable of remedy, it shall not have been remedied by the defaulting party within 28 days of written notice specifying the breach and requiring its remedy, or if the other party becomes insolvent, has a receiver appointed over the whole or any part of its assets, enters into any voluntary arrangement or otherwise compounds with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for amalgamation or reconstruction) or an administrative order is made in respect of it.
- 8.5 Termination of this Agreement shall be without prejudice to the accrued rights and obligations of the parties.
- 8.6 Termination of this Agreement for any reason shall not bring to an end to the User's obligations to pay any licence fee which is due and Clauses 6, 7, 8.7 and 13 shall also survive such termination.
- 8.7 On termination of this Agreement for any reason, the User shall cease to use the Licensed Images and shall deliver up to SCRAN on request all copies of the Licensed Images and all information, manuals, documents and software relating to the SCRAN Database or any part thereof in its possession or control and in the possession or control of the Permitted Individuals.

## **9. FORCE MAJEURE**

- 9.1 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement (other than any obligation to make payment to the other under this Agreement) by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue. If such Force Majeure persists for a continuous period of ninety days then the non-affected party shall be entitled to terminate this Agreement immediately upon written notice to the other.
- 9.2 For the purposes of this Agreement "Force Majeure" shall be deemed to be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party concerned.

## **10. GENERAL**

- 10.1 No variation or amendment to this Agreement shall bind either party unless made in writing and signed by or on behalf of both parties.
- 10.2 Failure by either party hereto to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.
- 10.3 If any provision of this Agreement is held to be unlawful or unenforceable, the rest of this Agreement shall remain in full force and effect.
- 10.4 The User acknowledges that it is not the agent or representative of SCRAN and the User undertakes not to hold itself out as same.

## **11. NOTICES**

Any notice required to be given hereunder by either party to the other shall be in writing and shall be served by sending the same by first class registered or recorded delivery post to the address of the other party as given herein or to such other address as that party may have

previously notified to the party giving notice as its address for such service. Such notice will be deemed to be received two (2) days after the date of posting.

**12. ASSIGNATION**

12.1 Subject to clause 12.2, neither party shall be entitled to assign, sub-contract or otherwise transfer the benefit or burden of this Agreement, whether in whole or in part, without obtaining the prior written consent of the other party.

12.2 SCRAN shall be entitled to assign, sub-contract or otherwise transfer all or any part of the benefit or burden of this Agreement to SCRAN Trust or any other member of the SCRAN Group and to any other charitable institution or institutions having objects similar to the objects of SCRAN and which prohibit the distribution of its or their income and property to its or their members to an extent at least as great as are imposed on SCRAN by virtue of the terms of its Memorandum of Association.

**13. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.