

## EDUCATION IMAGE GALLERY SUB-LICENCE AGREEMENT

THE JISC CONTENT PROCUREMENT COMPANY LIMITED (TRADING AS JISC COLLECTIONS), a company incorporated in England and Wales and limited by guarantee whose registered office is at Ground Floor, Brettenham House South, Lancaster Place, London WC2E 7EN ("JISC Collections")

OFFERS to you, the Sub-Licensee, the permission to access and use the Licensed Work on the terms and conditions as set out in this Sub-Licence. Upon completing and returning the enclosed Acceptance of Sub-Licence Form, your institution will become a non-exclusive Sub-Licensee of JISC Collections.

Acceptance shall be by delivery of a completed copy of the Acceptance of Sub-Licence Form attached hereto to JISC Collections or a JISC Collections' authorised agent who will accept delivery on behalf of JISC Collections. Acceptance shall be acceptance of all terms of this Sub-Licence and no variation or counter offer will be accepted by JISC Collections. In the event that no or partial compliance is made as to the manner or form described for acceptance, no sub-licence will be granted and this offer is deemed withdrawn.

### RECITALS

WHEREAS Education Image Gallery is a collection of 60,000 curriculum-related images from the Hulton Archive, PhotoDisc and Getty Images' editorial news service, and each image is accompanied by extensive meta-data, including keywords to give easily accessed and comprehensive coverage of curriculum-related subjects, and all images are copyright cleared for use within the educational environment;

AND WHEREAS Education Image Gallery and all Intellectual Property Rights (as hereafter defined) therein are owned by or licensed to Getty Images International Limited, herein referred to as "Getty Images";

AND WHEREAS by an agreement between Getty Images and JISC Collections (the "Education Image Gallery Licence Agreement"), JISC Collections is permitted to sub-licence the access and use of Education Image Gallery to Sub-Licensees in accordance with the terms of this Sub-Licence.

JISC COLLECTIONS AND THE SUB-LICENSEE AGREE AS FOLLOWS:

### 1. DEFINITIONS

1.1 In this Sub-Licence, the following expressions shall have the following meanings:

“Adaptations”	means any adaptation, alteration, addition to, deletion from, manipulation, or modification of parts of the Licensed Work
"Authorised Users"	<p>means individuals who are authorised by the Sub-Licensee to access the Sub-Licensee’s information services whether on-site or off-site via Secure Authentication and who are affiliated to the Sub-Licensee as a current student (including but not limited to undergraduates and postgraduates), member of staff (whether on a permanent or temporary basis including but not limited to any teacher who teaches</p> <p>Authorised Users in the United Kingdom) or contractor of the Sub-Licensee. Persons who are not a current student, member of staff or a contractor of the Sub-Licensee, but who are permitted to access the Sub-Licensee’s information services from computer terminals or otherwise within the physical premises of the Sub-Licensee ["Walk-In Users"] are also deemed to be Authorised Users, only for the time they are within the physical premises of the Sub-Licensee. Walk-In Users may not be given means to access the Licensed Work when they are not within the physical premises of the Sub-Licensee. For the avoidance of doubt, Walk-In Users may not be given access to the Licensed Work by any wireless network provided by the Sub-Licensee unless such network is a Secure Network.</p>
"Charges"	means the charges as set out in Schedule 1.
"Commercial Use"	means use of the Licensed Work for the purpose of monetary reward (whether by or for the Licensee, an Authorised Institution or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Work. For the avoidance of doubt, neither the Licensee Charge nor the recovery of direct cost by Authorised Institutions from Authorised Users, nor use by Authorised Institutions or Authorised Users of the Licensed Work in the course of research funded by a commercial organisation is deemed to constitute Commercial Use.
"Educational Purposes"	means for the purpose of education, teaching, distance learning, private study and/or research.
"HEFCE"	means the Higher Education Funding Council for England.
"Intellectual Property Rights"	means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how 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.
"JORUM Repository"	means the central repository of learning and teaching material funded by the UK funding bodies.
"Licensed Work"	means the product licensed in this Sub-Licence known to the parties as ‘Education Image Gallery’ being a collection of 60,000 curriculum-related images from the Hulton Archive, PhotoDisc and Getty Images’ editorial news service, and each image is accompanied by extensive meta-data, including keywords to give easily accessed and comprehensive coverage of curriculum-related subjects, and all images are copyright cleared for use within the educational environment

"Secure Authentication"	means access to the Licensed Work by UK Access Management Federation compliant technology, Internet Protocol ("IP") ranges or by another means of authentication agreed in writing between the EDINA and the Licensee from time to time.
"Secure Network"	means a network which is only accessible by Secure Authentication.
"Sub-Licensee"	means the sub-licensee whose details are set out in the Acceptance of Sub-Licence Form attached hereto and made a part hereof.

1.2 Headings contained in this Sub-Licence are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

## **2. GRANT OF SUB-LICENCE**

2.1 The Sub-Licensee agrees to pay the Charges as set out in Schedule 1, in consideration of which JISC Collections agrees to grant to the Sub-Licensee a non-exclusive sub-licence to access and use the Licensed Work and to allow Authorised Users to access and use the Licensed Work throughout the term of this Sub-Licence by Secure Authentication for Educational Purposes only.

## **3. USE OF THE LICENSED WORK**

3.1 Throughout the term of this Sub-Licence the Sub-Licensee may for Educational Purposes only:

3.1.1 make such temporary local electronic copies of all or part of the Licensed Work as are necessary to ensure efficient use by Authorised Users, provided that such use is subject to all the terms and conditions of this Sub-Licence;

3.1.2 allow Authorised Users to access the Licensed Work by Secure Authentication in order to search, retrieve, display and view, and otherwise use portions thereof;

3.1.3 allow Authorised Users to electronically save parts of the Licensed Work;

3.1.4 allow Authorised Users to print out copies of parts of the Licensed Work;

3.1.5 provide single printed or electronic copies of parts of the Licensed Work at the request of individual Authorised Users;

3.1.6 incorporate parts of the Licensed Work for use by Authorised Users in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research

- environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;
- 3.1.7 allow Authorised Users to incorporate parts of the Licensed Work in printed or electronic form in assignments and portfolios, theses and in dissertations (“the Academic Works”), including reproductions of the Academic Works for personal use and library deposit, if such use conforms to the customary and usual practice of the Sub-Licensee. Reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works.
  - 3.1.8 display, download and print parts of the Licensed Work for the purpose of promotion of the Licensed Work, testing of the Licensed Work, or for training Authorised Users;
  - 3.1.9 publicly display or publicly perform parts of the Licensed Work as part of a presentation at a seminar, conference, or workshop, or other such similar activity;
  - 3.1.10 make such copies of training material and network such training material as may be required for the purpose of using the Licensed Work in accordance with this Sub-Licence; and
  - 3.1.11 deposit in perpetuity the learning and teaching objects as referred to in Clause 3.1.7 in electronic repositories operated by the Sub-Licensee on a Secure Network and in the JORUM Repository. The access and use of such learning and teaching objects shall be governed by the terms and conditions of the applicable repository.
- 3.2 This Sub-Licence shall be deemed to complement and extend the rights of the Institution and Authorised Users under the Copyright, Designs and Patents Act 1988 and the Copyright (Visually Impaired Persons) Act 2002 and nothing in this Sub-Licence shall constitute a waiver of any statutory rights held by the Institution and Authorised Users from time to time under these Acts or any amending legislation.

#### **4. RESTRICTIONS**

- 4.1 Save as provided herein, the Sub-Licensee and Authorised Users may not:
  - 4.1.1 sell or resell the Licensed Work unless the Sub-Licensee or an Authorised User has been granted prior written consent by Getty Images to do so;
  - 4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear;
  - 4.1.3 display or distribute any part of the Licensed Work on any electronic network, including without limitation the Internet and the World Wide Web, and any other

distribution medium now in existence or hereinafter created, other than by a Secure Network;

4.1.4 use all or any part of the Licensed Work for any Commercial Use or for any purpose other than Educational Purposes.

4.2 This Clause 4 shall survive termination of this Sub-Licence for any reason.

## **5. RESPONSIBILITIES OF THE SUB-LICENSEE**

5.1 The Sub-Licensee will:

5.1.1 issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;

5.1.2 use all reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Work;

5.1.3 use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Sub-Licence;

5.1.4 use all reasonable efforts to monitor compliance with the terms of this Sub-Licence and notify Getty Images and JISC Collections immediately and provide full particulars on becoming aware of any of the following (a) any unauthorised access to or use of the Licensed Work or unauthorised use of any of the Sub-Licensee's password(s); or (b) any breach by an Authorised User of the terms of this Sub-Licence. Upon becoming aware of any breach of the terms of this Sub-Licence the Sub-Licensee further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Sub-Licensee's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence;

5.1.5 comply with all computer security procedures required by JISC Collections and/or a third party duly appointed by JISC Collections and take all reasonable steps to ensure the security of the Licensed Work;

5.1.6 provide lists of valid IP addresses to JISC Collections and update those lists on a regular basis the frequency of which will be agreed by the parties from time to time and

5.1.7 use all reasonable efforts to ensure that Authorised Users give credit to Getty Images as the copyright owner, in the following format: “[Photographer Name]/ Getty Images” whenever an image contained in the Licensed Work is reproduced.

## **6. RESPONSIBILITIES OF JISC COLLECTIONS**

6.1 JISC Collections shall use all reasonable efforts to ensure access and use of the Licensed Work in accordance with the provisions as laid down in this Sub-Licence.

6.2 JISC Collections shall use all reasonable efforts to cause customer support services to be provided to the Sub-Licensee and to Authorised Users.

## **7. USAGE DATA**

7.1 The parties shall co-operate in gathering any data on usage of the Licensed Work that is available to them during the term of this Sub-Licence, and shall provide such data to each other upon request. Notwithstanding the foregoing, the parties shall neither assemble nor provide data from which an individual user could be identified.

## **8. CHARGES**

8.1 The Sub-Licensee will pay the Charges to JISC Collections for the Sub-Licence in the amount and upon terms as set out in Schedule 1.

## **9. TERM AND TERMINATION**

9.1 The term of this Sub-Licence will commence upon the date of signature and will remain in full force and effect until 31<sup>st</sup> July 2010, unless terminated earlier as provided for in this Clause 9.

9.2 Either party may terminate this Sub-Licence at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Sub-Licence by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach.

9.3 Notwithstanding anything to the contrary herein, this Sub-Licence will be treated as if terminated if the Education Image Gallery Licence Agreement between Getty Images and JISC Collections terminates until JISC Collections remedies the breach. JISC Collections will notify the Sub-Licensee of such termination and when it has remedied the breach. JISC Collections shall make reasonable endeavours not to cause the Education Image Gallery Licence Agreement between Getty Images and JISC Collections to terminate.

9.4 Further, notwithstanding anything to the contrary herein, upon termination/expiry of this Agreement or a breach by the Sub-Licensee, on-line access to the Licensed Work shall be terminated.

9.5 Upon termination of this Agreement, print and electronic copies of all or parts of material containing the Licensed Work and Adaptations made by the Sub-Licensee or Authorised Users during the term of this Agreement may be retained

and used subject to the terms of Clauses 3 and 4 of this Sub-Licence, which terms shall survive the termination of this Agreement. For the avoidance of doubt, upon termination of this Agreement, the Sub-Licensee or Authorised Users shall not make any Adaptations or create any new work featuring all or part of the Licensed Work.

## **10. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

10.1 The Sub-Licensee acknowledges that the Intellectual Property Rights in the Licensed Work are the sole and exclusive property of Getty Images or are duly licensed to Getty Images and that this Sub-Licence does not assign or transfer to the Sub-Licensee any right, title or interest therein except for the right to use the Licensed Work in accordance with the terms and conditions of this Sub-Licence.

## **11. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION**

11.1 The Sub-Licensee represents and warrants that it has sufficient authority and rights to enter into and perform its obligations under this Sub-Licence.

11.2 JISC Collections represents and warrants that it has the right to grant the Sub-Licence and that the use of the Licensed Work by the Sub-Licensee and Authorised Users in accordance with the terms of this Sub-Licence shall not infringe the copyright of any third party. The foregoing shall not apply to improper usage of the Licensed Work by the Sub-Licensee or Authorised Users. JISC Collections makes no representation or warranty, and expressly disclaims any liability with respect to the content of the Licensed Work, including but not limited to errors or omissions contained therein, libel, infringement of rights of publicity, privacy, trademark rights, moral rights, or the disclosure of confidential information.

11.3 The Sub-Licensee agrees to notify Getty Images UK (Ltd) and JISC Collections within 48 hours and provide full particulars in the event that it becomes aware of any actual or threatened claims by any third party in connection with any works contained in the Licensed Work. It is expressly agreed that upon such notification, or if Getty Images UK (Ltd) becomes aware of such a claim from other sources, Getty Images may remove such work(s) from the Licensed Work. At the request of Getty Images UK (Ltd), the Sub-Licensee will make all reasonable efforts to remove such work(s) from any copies of the Licensed Work maintained by the Sub-Licensee. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Sub-Licence.

11.4 Nothing in this Sub-Licence shall make the Sub-Licensee liable for breach of the terms of this Sub-Licence by any Authorised User provided that the Sub-Licensee did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.

- 11.5 Subject to the above and to the extent permitted by law, JISC Collections shall not be liable to the Sub-Licensee for any loss or damage including any loss of profits, goodwill, contract or any indirect or consequential loss including loss or damage suffered by the Sub-Licensee as a result of an action brought by a third party. .
- 11.6 Other than the express warranties stated in this Clause 11, the Licensed Work is provided on an “as is” basis, and JISC Collections disclaims any and all other warranties, conditions, or representations (express, implied, oral or written), relating to the Licensed Work or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose. JISC Collections further expressly disclaims any warranty or representation to Authorised Users, or to any third party. JISC Collections accepts no liability for loss suffered or incurred by the Sub-Licensee or Authorised Users as a result of their reliance on the Licensed Work.
- 11.7 The Sub-Licensee represents to JISC Collections that its computer system through which the Licensed Work will be used is configured, and procedures are in place, to prohibit access to the Licensed Work by any person other than an Authorised User; that it shall inform Authorised Users about the conditions of use of the Licensed Work; and that during the term of this Sub-Licence, the Sub-Licensee will continue to make all reasonable efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.
- 11.8 JISC Collections and the Sub-Licensee do not seek to exclude liability under this Agreement for fraud or for personal injury or death caused by its negligence and the negligence of its employees, authorised sub-contractors and agents.

## **12. FORCE MAJEURE**

- 12.1 Either party’s failure to perform any term or condition of this Sub-Licence as a result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities) ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this Sub-Licence.
- 12.2 If either party to this Sub-Licence is prevented or delayed in the performance of any of its obligations under this Sub-Licence 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.

## **13. ASSIGNMENT**

13.1 Neither this Sub-Licence nor any of the rights and obligations under it may be assigned or sub-licensed by the Sub-Licensee without obtaining the prior written consent of JISC Collections or HEFCE, after an assignment by JISC Collections to HEFCE, such consent not to be unreasonably withheld or delayed. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Sub-Licence and agrees to be bound to all the terms of this Sub-Licence.

#### **14. GOVERNING LAW AND DISPUTE RESOLUTION**

14.1 This Sub-Licence shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Sub-Licence will be subject to and within the jurisdiction of the English courts.

14.2 Where the parties agree that a dispute arising out of or in connection with this Sub-Licence would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement. In default of agreement upon whom to appoint as a suitable expert, such expert shall upon the request of either party be appointed by the Chair for the time being of Universities UK (<http://www.universitiesuk.ac.uk>).

14.3 Any person to whom a reference is made under Clause 14.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.

14.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.

14.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

#### **15. NOTICES**

15.1 All notices required to be given under this Sub-Licence shall be given in writing in English and sent by electronic mail, fax or first class registered or recorded delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Sub-Licence, and all such notices shall be deemed to have been received (a) 24 hours after successful transmission in the case of electronic mail or fax; (b) fourteen (14) days after the date of posting in the case of first class registered or recorded delivery:

if to JISC Collections:  
Lorraine Estelle  
Chief Executive Officer

JISC Collections  
Brettenham House South 5 Lancaster Place  
London WC2E 7EN  
l.estelle@jisc.ac.uk

If to Getty Images UK (Ltd): Getty Images International Limited  
c/o Head of Legal  
101 Bayham Street  
London NW1 0AG  
Fax: 020 7424 8070  
E-mail: [jonathan.lockwood@gettyimages.com](mailto:jonathan.lockwood@gettyimages.com)  
c.c: [charles.merullo@gettyimages.com](mailto:charles.merullo@gettyimages.com)

if to the Sub-Licensee: [As stated in the Acceptance of Sub-Licence Form]

## **16. GENERAL**

- 16.1 This Sub-Licence and its Schedules constitute the entire agreement between the parties relating to the Licensed Work and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.
- 16.2 The Schedules shall have the same force and effect as if expressly set in the body of this Sub-Licence and any reference to this Sub-Licence shall include the Schedules.
- 16.3 The invalidity or unenforceability of any provision of this Sub-Licence shall not affect the continuation in force of the remainder of this Sub-Licence.
- 16.4 The rights of the parties arising under this Sub-Licence shall not be waived except in writing. Any waiver of any of a party's rights under this Sub-Licence or of any breach of this Sub-Licence by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Sub-Licence 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.

## **SCHEDULE 1 – CHARGES AND PAYMENT TERMS**

By returning a signed copy of this Sub-Licence, the Sub-Licensee accepts that it must pay to JISC Collections the total sum of the charges for the whole term of this Sub-Licence in accordance with the applicable JISC Collections charging band. JISC Collections or a JISC Collections' authorised agent will invoice the Sub-Licensee annually for the applicable charge as set out below. All prices are exclusive of VAT, which will be payable where applicable.

For the avoidance of doubt the term of this Sub-Licence will commence upon the date of signature of the attached Acceptance of Sub-Licence Form and will remain in full force and effect until the date of termination as set out in Clause 9.

In the event that the Sub-Licensee signed the Acceptance of Sub-Licence Form during a given year, the Sub-Licensee shall pay JISC Collections that part of the applicable charge which represents the period covering the date of signature of the Acceptance of Sub-Licence Form up to the date where the next 12 months subscription period starts. Thereafter the Sub-Licensee will pay JISC Collections the full applicable charges for subsequent years as and where applicable.

<b>JISC Charging Band</b>	<b>Annual Subscription Charges</b>		
	<b>Year 1 2007 - 2008</b>	<b>Year 2 2008 - 2009</b>	<b>Year 3 2009 - 2010</b>
<b>A - B</b>	£900	£900	£900
<b>C - D</b>	£850	£850	£850
<b>E - F</b>	£800	£800	£800
<b>G - H</b>	£400	£400	£400
<b>I - J</b>	£250	£250	£250

Invoices shall be due and payable no later than thirty (30) days after being issued by JISC Collections or a JISC Collections' authorised agent.