

# MIRA ARTIST SERVICE AGREEMENT

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This Mira Artist Service Agreement (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (hereinafter referred to as the "Artist"), and MIRA, a division of Creative Eye Cooperative ("CE"), an Artist cooperative. The Artist and CE/MIRA are sometimes collectively referred to herein as the "Parties."

### RECITALS:

WHEREAS, the Artist is (1) a member of CE and is engaged in the business of creating images for publication ("CE Member"), or (2) the legally appointed representative or trustee of a CE Member, or (3) the legally appointed personal representative, legally appointed trustee, beneficiary or heir of a deceased CE Member.

WHEREAS, MIRA is an unincorporated program of CE and is engaged in the business of licensing the CE images created by its members, under the terms and conditions established by and CE and approved by its' members, to interested third parties for their use, reproduction, distribution and/or publication.

### AGREEMENT:

1. Grant of Authority.
  - a. The Artist designates MIRA and CE as the Artist's nonexclusive agent for the purpose of negotiating the sales and licensing of all images created by the Artist, which are authorized by the Artist to be sold and licensed by CE/MIRA on the Artist's behalf (the "Images") as provided pursuant to paragraph 3 below. CE/MIRA is authorized to solicit licensing opportunities on behalf of the Artist (including the employment of subagents by CE/MIRA) with respect to the Images and to enter into negotiations for the licensing of the CE/MIRA Artist's Images (the "Licensing"). For purposes of this Agreement, the "Licensees" shall include all actual and prospective licensees of the Artist's Images. Upon execution of this Agreement by the Parties, CE/MIRA shall be authorized to engage in the Licensing of the Artist's images based upon the pricing options and pricing minimums chosen by the Artist, without the necessity of obtaining Artist's prior authority with respect to licensing negotiations of the Images.

- b. The Artist's geographic scope of CE/MIRA's licensing authority shall be worldwide, unless otherwise limited in writing by the Artist and agreed to by CE/MIRA.
- c. CE/MIRA specifically agrees not to negotiate or enter into any agreement with respect to the Licensing of Images at rates, which are below the minimum pricing rates previously agreed to by Artist.
- d. CE/MIRA is authorized to use or employ such subagents as may be necessary to carry out the purposes of this Agreement.
- e. CE/MIRA shall not have the right to sell or assign any of the Artist's rights in the Images, unless specifically authorized to do so in writing by the Artist.
- f. CE/MIRA is authorized to edit all Images submitted to CE/MIRA for content and quality purposes without the necessity of obtaining Artist's prior written consent. All rejected images will be returned to the artist in a reasonable timeframe.
- g. Artist hereby authorizes CE/MIRA's complimentary use of the Artist's Images for the purpose of marketing and promoting its services. The Artist will be informed and appropriately credited as the originating Artist in the event of any such use.

2. Custody of and Rights in the Images.

- a. All the Images delivered to MIRA for Licensing under this Agreement shall at all times be and remain the exclusive property of the Artist and shall be held in trust by CE/MIRA for the purposes of this Agreement.
- b. The copyright and other rights in and to the Images shall remain the exclusive property of the Artist, and nothing in this Agreement shall be interpreted as a conveyance of any such rights from the Artist to CE/MIRA, other than the rights specifically enumerated in this Agreement.
- c. CE/MIRA shall have the right to record any Images on or in any storage, delivery, and/or catalog system, regardless of whether

such system is digital, analog, print, photographic, or otherwise (the "Recorded Images"). CE/MIRA owns the scans/digital files of these recorded images. While the Artist may request that an image(s) be deleted from the system at any time, CE/Mira is under no obligation to return their copies of the images to the Artist or make copies of images or any other images on behalf of the Artist.

- d. Termination of this Agreement requires a minimum of thirty (30) days advance written notice of revocation from the Artist to CE/MIRA. CE shall not be required to remove the Recorded Images from a storage, delivery, and/or catalog system until thirty (30) days following receipt by CE/MIRA of written termination from the Artist. During such period, any sales made by CE/MIRA shall be paid to Artist in accordance with this Agreement.

3. Images Eligible for Licensing by CE/MIRA. Unless otherwise specifically designated by the Artist as ineligible for Licensing, CE/MIRA is authorized to License, subject to the Artist's approval of the terms and conditions thereof as provided in Section 1(f) hereof, all the Images submitted by Artist and in which the Artist, his representatives, trustees, beneficiaries and/or heirs, retain, individually or collectively, sole ownership of the copyrights.

4. Obligations of the Artist.

- a. The Artist shall affix a proper copyright notice consisting of the symbol © or word 'copyright', respectively, the name of the CE/MIRA Artist, and the year of first publication, of if unpublished, the year of creation, to all copies of any Images delivered to CE/MIRA for purposes of this Agreement.
- b. The Artist shall be responsible for accurately captioning and applying all buyer usage restrictions to all the Images delivered to CE/MIRA pursuant to this Agreement.
- c. The Artist shall be responsible for obtaining all model and/or property releases that are necessary to enable CE/MIRA to lawfully License the Images and shall provide CE/MIRA with copies of such releases upon request of CE/MIRA. The Artist shall specifically identify each Image for which all necessary releases have been obtained.

- d. The Artist agrees to support the pricing options personally chosen for the images with which they are participating in Mira by upholding these prices in their daily practices with respect to the images, including any stock sales which may come to them directly and with any other stock agencies in which the Artist sets the pricing for their images.
  
5. Warranties of the Artist. The Artist represents and warrants to CE/MIRA as follows:
  - a. The Artist, individually or jointly or collectively with other Artists entering into this Agreement, is the sole owner of the copyrights in the Images and has the right to License the use, reproduction, distribution and publication of the Images to others.
  - b. To the best of the Artist's knowledge, the Images do not infringe the copyright, trademark, privacy, publicity, or other rights of any third party, nor do the Images defame any third party.
  - c. The Artist has obtained all necessary model and/or property releases with respect to the Images that the Artist has identified as necessary to be released. If an image's release is questionable or unavailable, the image will be represented for editorial sale only.
  - d. The Artist, individually or jointly or collectively with other Artists entering into this Agreement, has the right to enter into this Agreement, and the performance of the obligations established by this Agreement, will not violate any other contract or agreement to which the Artist may be a party.
  - e. If the Artist consists of more than one person, all such persons agree that each of them is hereby authorized to act on behalf of all of them.
  
6. Indemnification by Member. A member indemnifies and holds the corporation harmless from any claims, demands, damages, costs, or expenses, including reasonable attorney's fees, incurred by the corporation in a legal proceeding filed against a member in which the corporation is made a party, arising from or relating to the acts or omissions, or the alleged acts or omissions of such member. The member will be obligated to pay the corporation respective costs and

expenses, arising from or related to, breach of the Artist's warranties set forth in Section 5 above. Selection of Creative Eye legal counsel and management of expenses surrounding any claims, demands, damages, or legal proceedings will be determined and maintained by Creative Eye's Board of Directors.

7. Obligations of CE/MIRA.

- a. CE/MIRA will attempt in good faith to License the Images on terms and conditions that maximize the benefits to the Artist. While CE/MIRA represents that it will use its best efforts to license the Images on the Artist's behalf, no guarantee for the sale of the Images is expressed or implied by this Agreement and Artist hereby expressly acknowledges and agrees that there is no guarantee as to the results, which CE/MIRA may have by way of this Agreement. Further, Artist hereby waives any claims against CE/MIRA arising out of the Artist's agreement to employ CE/MIRA to license pursuant to this Agreement. CE/MIRA shall promptly notify the Artist upon discovery of any potentially infringing use of the Images or of the loss or damage to the Images. Upon receipt of such notice, the Artist shall be responsible for undertaking any enforcement or other legal action necessary to protect his or her rights, but the Artist may engage CE/MIRA, upon agreement by CE/MIRA, to undertake appropriate legal action on his or her behalf as provided below in subsection (f).
  
- b. CE/MIRA shall collect all monies paid to the Artist by the third parties that enter into agreements with CE/MIRA for the use of the Artist's Images. CE/MIRA shall remit payments for which CE/MIRA has received payment from third parties to the Artist as provided under this Agreement on a monthly basis, unless such payments are less than One Hundred Dollars (\$100.00), in which event payment may be deferred no longer than six (6) months or until such time as the amounts due to the Artist exceed One Hundred Dollars (\$100.00). All payments represent licensing fees for transactions completed in the month prior to payment being received by Artist. CE/MIRA shall have no duty to make any payments to Artist under this Agreement until such time as CE/MIRA has received payment from the third parties for use of Artist's Images. CE will exercise reasonable efforts to collect licensing fees.

- c. Each monthly payment by CE/MIRA to the Artist shall be accompanied by a detailed statement containing the following information: (i) the identities of the Image(s) generating the revenues; (ii) the identity of the third party paying the revenues; (iii) a reference to the licensing agreement(s) by the number, date, or other appropriate designation pursuant to which the third party made payment; (iv) the date the payment(s) was received by CE/MIRA; (v) the gross revenues collected by CE/MIRA for the period in the form of licensing fees paid for use of the Artist's Image(s); and (vi) the deductions from gross revenues made by CE/MIRA pursuant to the terms of this Agreement.
- d. If requested to undertake the enforcement of the Artist's copyright rights against one or more infringers and if CE/MIRA agrees to undertake such enforcement action on the Artist's behalf, Artist and CE/MIRA shall enter into a separate written agreement specifying each party's rights and obligations with respect to the action to be taken by CE/MIRA against the infringer(s).
- e. CE/MIRA will retain complete and accurate records of all licenses and payments described in Subsection 7c for a period of no less than seven (7) years after the date such Advices are issued.
- f. In the event of a dispute between the Artist and CE/MIRA, the existence of an issue which is not resolved to the Artist's satisfaction, or in connection with the Artist's periodic audit policies, during the period in which CE/MIRA is required to keep the records specified in Subsection 7e (CE/MIRA Records), the Artist may employ an independent certified public accountant, auditor, attorney or licensed financial advisor to audit CE/MIRA's records of amounts paid to the Artist under this Agreement, once in any twelve (12) month period, upon thirty (30) days' prior written notice, at a time mutually agreed. The costs of the audit shall be paid by the Artist. However, if the audit reveals that there has been an underpayment of more than One Thousand Dollars (\$1,000.00) or five percent (5%), whichever is greater, of the monies due to the Artist during any twelve (12) month period, then CE/MIRA will reimburse the Artist for the actual costs of the audit. Regardless of the size of any underpayment, CE/MIRA will pay the Artist eleven percent (11%) per annum interest on the sum due, correct the books and records and make payment of any amounts due within thirty (30) days.

8. Compensation of CE/MIRA.

a. In exchange for the Licensing services provided to the Artist under this Agreement, CE/MIRA will be entitled to be paid forty percent (40%) of the gross revenues (as defined below) earned from CE/MIRA's Licensing of the Artist's Image(s). Such payments to CE/MIRA shall be made by deducting forty percent (40%) of the gross revenues received by CE/MIRA for the preceding month from the Licensing of Artist's Image(s). The balance of the gross revenues (sixty percent (60%) of the amounts set forth above), shall be paid to Artist in accordance with paragraph 7 above. Under any subagent relationship, Mira guarantees a minimum of sixty percent (60%) of the sub agent's gross licensing fees to be paid to the Artist. For purposes of this Agreement, "net revenues" shall consist of all revenues received by Mira after contractually agreed upon sub agent percentages have been deducted from the Licensing of Artist's Image(s). "Net revenues" shall include, but shall not be limited to, all holding fees, "comp" fees, and lost transparency charges attributable to the Artist's Images.

9. Term. This Agreement shall commence as of the date written above and shall continue until such time as either party gives thirty (30) days advance notice of intent to terminate the Agreement to the other party. Both Artist and CE/MIRA shall have the unrestricted right to terminate this Agreement at any time for any reason.

10. Notices. All notices given under this Agreement shall be delivered to the following addresses unless otherwise stated in writing.

If to CE/MIRA: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Artist: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Governing Law. This Agreement shall be interpreted in accordance with the law of the State of Delaware. Waiver and Amendment. Any provision of this Agreement may be amended or waived only by a writing signed by the party against which enforcement of the amendment or waiver is sought.

12. Assignment. The rights, benefits and obligations under the Agreement cannot be assigned by Artist or CE/MIRA without the prior written consent

of the other. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and assigns.

13. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to their Licensing arrangement and supersedes any prior written or oral understanding between the Parties related to that subject.
  
14. Counterparts/Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original. Facsimile signatures of counterparts of this Agreement shall be binding upon the Parties.

WHEREFORE, the Parties have evidenced their assent to the terms and conditions of the Agreement by the signatures set forth below.

**CE/MIRA**

Creative Eye Cooperative

By: Photographers and Illustrators  
Copyright Agency, Inc., a Delaware  
corporation

Its: Parent corporation

By: \_\_\_\_\_  
Its: Duly Authorized Agent

**ARTIST**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_