

Annex B - Final Option Agreement

DATED [■]
202[■]

PARTIES

- (1) [[INSERT INDIVIDUAL NAME] of [INSERT INDIVIDUAL'S ADDRESS]] [[INSERT NAME OF COMPANY] (Company registration no: [INSERT CO. NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS]] [[INSERT OTHER DESCRIPTION OF SELLER IF NEITHER AN INDIVIDUAL OR COMPANY]] (the **Seller**).
- (2) [[INSERT NAME OF COMPANY] (Company registration no: [INSERT CO. NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS]] [INSERT OTHER DESCRIPTION IF BUYER NOT A COMPANY] (the **Buyer**).

WHEREAS

- (A) The Seller owns the Works and has agreed to enter into a call option in favour of the Buyer to purchase the Works on the terms and subject to the conditions of this agreement.
- (B) The Buyer has agreed to enter into a call option to purchase the Works on the terms and subject to the conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Clause 1 apply in this agreement (including in recital (A) and (B) above).

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Completion: the completion of the exercise of the Option and the purchase of the Works by the Buyer as described in Clause 8.

Consideration: the purchase price for the Works set out in Part B of Schedule 1, payable by the Buyer to the Seller on Completion in accordance with the procedure set out in Part B of Schedule 1.

Encumbrance: any mortgage, charge (fixed or floating), pledge, claim, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, however created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect (and **Encumber** shall be construed accordingly).

Exercise Notice: the written notice given by the Buyer in accordance with Clause 6.

First Condition Report: the condition report set out in Schedule 2 relating to the Works which has been prepared by the Buyer prior to the date of this agreement.

Good Industry Practice: at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert seller of works similar to the Works to a buyer like the Buyer, such seller seeking to comply with its contractual obligations in full and complying with applicable law.

Independent Condition Report: the condition report referred to in Clause 2.2.

Lapse: the lapse of the Option in accordance with Clause 4.

Option: the option granted by the Seller in favour of the Buyer in accordance with Clause 3.

Option Period: the time during which the Buyer may exercise the Option, as set out in Clause 4.

Second Condition Report: the condition report to be prepared under Clause 8 in relation to the Works.

Seller's Bank Account: [■]¹

Transfer Deed: a deed in the form set out in Annexure 2 and which has been signed by each of the parties and held by the Buyer's solicitor to the Seller's solicitor's order pending Completion.²

Works: the works more particularly described in Part A of Schedule 1.

- 1.2 Clause, Schedule, Annexure and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 Unless otherwise stated, references to clauses, the Schedule and the Annexures are to the clauses of, and the Schedule and Annexures to, this agreement and references to paragraphs are to paragraphs of the Schedule or Annexure (as applicable).
- 1.4 The Schedule and Annexures form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedule and the Annexures.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 A reference to a party shall include that party's successors and permitted assigns.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

¹ Drafting Note: details to be completed by the Seller.

² Drafting Note: it is anticipated that the respective Solicitors of the parties will agree arrangements whereby the signed Transfer Deed will be held by the Buyer's solicitor to the order of the Seller's solicitor, i.e. that the Buyer's solicitor may not take any action in relation to the signed Transfer Deed without the consent of the Seller's solicitor, other than when the Exercise Notice has been served and Completion has taken place.

- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to **in writing** or **written** shall not include fax or e-mail (unless otherwise expressly provided in this agreement).³
- 1.11 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. FIRST CONDITION REPORT

- 2.1 The Buyer shall forward the First Condition Report to the Seller as soon as possible following its completion, and in any event no less than [●] Business Days prior to the parties signing the Option Agreement, and in the absence of any response from the Seller within a period of ten (10) Business Days, the First Condition Report shall be deemed to be a fair and reasonable assessment of the condition of the Works.
- 2.2 If the Seller objects to the contents of the First Condition Report, it shall inform the Buyer within ten (10) Business Days of receipt and the parties shall jointly instruct an independent third party to undertake an assessment of the condition of the Works and the report prepared by such independent third party (**Independent Condition Report**) shall be binding on the parties save in the case of a manifest error by such independent third party. If the parties fail to agree on the identity of the independent third party, the President of the Law Society of England and Wales shall, on the request of either party, be requested to nominate an independent third party.
- 2.3 The parties shall be jointly responsible for the costs of the independent third party in the preparation of the Independent Condition Report.

3. GRANT OF THE OPTION

- 3.1 In consideration of the payment of £1 by the Buyer to the Seller (receipt and sufficiency of which is hereby acknowledged by the Seller), the Seller grants to the Buyer an option to purchase the Works on the terms and subject to the conditions set out in this agreement.
- 3.2 Following the Buyer's exercise of the Option, and in accordance with the terms of this agreement, the Seller shall sell and the Buyer shall purchase the Works with full title guarantee free from all Encumbrances.

³ Drafting Note: The parties may, if they wish, agree that service by fax or email is to be permitted.

4. OPTION PERIOD

- 4.1 The Option may only be exercised by the Buyer on or before 23:59 (UK time) on [INSERT DATE] and, if the Option is not exercised on or before such time, it shall lapse.⁴
- 4.2 For the purposes of this Clause 4, the time and date of exercise of the Option is the time and date (UK time) on which the Buyer serves the Exercise Notice on the Seller (which the Seller acknowledges and agrees may be served on it by e-mail sent by or on behalf of the Buyer addressed to [●] at this email address [●], and not the time and date on which the Seller receives the Exercise Notice or is deemed to receive the Exercise Notice in accordance with Clause 16.

5. BUYER'S PROTECTION

- 5.1 During the Option Period, and until Completion if the Option is exercised, the Seller shall not sell, transfer or otherwise dispose of, or mortgage, charge, pledge or otherwise Encumber the Works or the Seller's legal or beneficial right and interest in it.
- 5.2 During the Option Period, and until Completion if the Option is exercised, the Seller shall *[insert any specific standards which are required in relation to the care of the Works which may also include specific arrangements relating to access and/or viewing of the Works by the Buyer and/or its potential funders during the Option Period. In certain circumstances, the parties may also agree that the Buyer may take possession of the Works during the Option Period to aid fundraising.]*⁵

6. EXERCISE

- 6.1 The Option shall be exercised only by the Buyer serving on the Seller an Exercise Notice in the form set out in Schedule 3 and which shall include (for the avoidance of any doubt):
- 6.1.1 the date on which the Exercise Notice is given;
 - 6.1.2 a statement to the effect that the Buyer is exercising the Option;
 - 6.1.3 a statement to the effect that the Buyer has the Consideration available to purchase the Works;
 - 6.1.4 a date, which is no less than five (5) and no more than ten (10) Business Days after the date of the Exercise Notice, on which Completion is to take place; and
 - 6.1.5 a signature by or on behalf of the Buyer.
- 6.2 Subject to Clause 8.1 and 9.3, once given, an Exercise Notice may not be revoked without the written consent of the Seller.

⁴ Drafting Note: the parties should note the statements contained in Arts Council England's guidance 'Procedures and guidance for exporters of works of art and other cultural goods' regarding length of the option Period.

⁵ Drafting Note: To be completed following discussion between the Seller and the Buyer.

7. CONSIDERATION

- 7.1 The Consideration payable for the Works following exercise of the Option shall be satisfied on Completion in accordance with Part B of Schedule 1.
- 7.2 The Buyer shall be responsible for any Value Added Tax due in the United Kingdom arising as a result of the sale of the Works.

8. COMPLETION

- 8.1 Following service of the Exercise Notice and prior to Completion, the Seller shall permit a Second Condition Report to be undertaken by the Buyer. Where the Second Condition Report determines that the Works have been damaged other than to the extent known under the First Condition Report (or, where relevant, under the Independent Condition Report obtained in accordance with Clause 2) then the Buyer may:
- 8.1.1 refer the matter to an independent third party agreed by the parties in writing, and failing agreement, nominated by the President of the Law Society of England and Wales, to confirm in writing such reduction in the Consideration as is appropriate in view of the damage suffered. In such event:
- (a) the length of time the Buyer has to Complete shall be extended by the time it takes for the independent third party to confirm to the parties in writing the reduction in the Consideration payable for the Works plus five (5) Business Days; and
 - (b) following confirmation by the independent third party of the reduction in the Consideration payable for the Works, which shall in the absence of manifest error be binding on the parties, the Seller shall sell and the Buyer shall, subject to Clause 8.1.2, buy the Works for the Consideration so determined; or
- 8.1.2 revoke the Exercise Notice upon notice to the Seller in writing (which may be served by e-mail to the recipient email address identified in Clause 4.2) whereupon the Option will lapse and the parties shall not Complete the sale and purchase of the Works.
- 8.2 Subject to Clauses 8.1 and 9.3, Completion shall take place on the date specified by the Buyer in the Exercise Notice or such later date as the parties may agree in writing.
- 8.3 On Completion:
- 8.3.1 the Transfer Deed shall come into effect and released from the Seller's solicitor's order⁶;
- 8.3.2 the Buyer shall pay the Consideration to the Seller by transfer to the Seller's Bank Account;

⁶ Drafting Note: The parties may, if they wish, elect to use the services of an Escrow Agent or an alternative mechanism for the logistics of Completion.

8.3.3 the Seller shall provide an appropriate receipt to the Buyer⁷; and

8.3.4 [title to and risk in the Works shall pass to the Buyer]⁸.

9. WARRANTIES AND INDEMNITY

9.1 The Seller represents and warrants to the Buyer, subject to any specific disclosures disclosed in writing by the Seller to the Buyer prior to the date of this Option Agreement, that:

9.1.1 it has full power, capacity and authority to enter into and perform this agreement and to grant the Option on the terms and conditions of this agreement;

9.1.2 this agreement is executed by a duly authorised representative of the Seller and that, once executed, this agreement will constitute the Seller's legal, valid and binding obligations;

9.1.3 it is, and will remain during the Option Period, the sole legal and beneficial owner of the Works, subject only to the Option⁹;

9.1.4 it has, and will retain during the Option Period (and, if later, until Completion), all right, title and interest to the Works free from all Encumbrances such that, subject to the Buyer's exercise of the Option in accordance with this agreement, the Seller will transfer to the Buyer good and valid title and the exclusive and unrestricted right to possession of the Works;

9.1.5 it has no knowledge of any Encumbrances threatened or pending nor any knowledge of any facts or circumstances likely to give rise to any Encumbrances;

9.1.6 it is not aware of any challenges or disputes (pending or threatened) relating to the provenance of the Works and it has provided the Buyer with all information concerning the provenance of the Works in the Seller's control or possession and has notified the Buyer in writing of any and all concerns, enquiries, claims or other form of expression of which it is aware that are or have been expressed by third parties in relation to the provenance and/or ownership of the Works;

9.1.7 to the best of the Seller's knowledge, information and belief, having made all due and reasonable enquiries in accordance with Good Industry Practice:

(a) the Works have not been imported into or exported from any country contrary to its laws; and

⁷ Drafting Note: If the Seller owns any copyright in the Works, the parties may elect to include this in the sale also. Appropriate amendment to be inserted here and in the Transfer Deed.

⁸ Drafting Note: The Seller and the Buyer should agree the process in relation to delivery and when risk in the Works passes to the Buyer.

⁹ Drafting Note: Where the Seller has entered into a provisional sale agreement, conditional upon the grant of an Export Licence, this warranty may be amended to include a reference to the provisional sale agreement also.

(b) the Works were originally created by [●].

9.1.8 if during the Option Period (and, if later, until Completion) it becomes aware of any information that would have put the Seller in breach of the warranties at sub-clauses 9.1.1 to 9.1.7 had it been aware of that information on the date of this agreement it will notify the Buyer in writing immediately.

9.2 The Seller shall indemnify and shall keep indemnified the Buyer against all losses, damages, costs or expenses and other liabilities arising from a breach of the Seller's representations and warranties in this Clause 9.

9.3 If following the exercise of the Option but prior to Completion the Seller notifies the Buyer of any information pursuant to its obligation under sub-clause 9.1.7 then the Buyer shall be entitled (at its discretion) to revoke the Exercise Notice upon notice to the Seller in writing (which may be served by e-mail to the recipient email address identified in Clause 4.1) whereupon the Option will lapse and the parties shall not Complete the sale and purchase of the Works.

9.4 The Seller acknowledges that the Buyer, if it exercises the Option, will do so in reliance on the representations, warranties and indemnity contained in this Clause 9.

9.5 Without prejudice to the Transfer Deed, the Seller will repeat on Completion each of the representations and warranties contained in this Clause 9 (construed accordingly).

10. CONFIDENTIALITY AND ANNOUNCEMENTS

10.1 The Seller undertakes to the Buyer, and the Buyer undertakes to the Seller, save as otherwise provided in this Clause 10, to keep confidential the terms of this agreement.

10.2 The Buyer may disclose the existence of this agreement and the amount of the Consideration and the Option Period (but no other term of the agreement including the identity of the Seller) to any potential donor or funder for the purpose of raising funding to enable it to exercise the Option and purchase the Works.

10.3 Either party may disclose any information that it is otherwise required to keep confidential under this Clause 10:

10.3.1 to such of its professional advisers, consultants and employees or officers as are reasonably necessary to advise on this agreement, or to facilitate the exercise of the Option, provided that the disclosing party procures that the people to whom the information is disclosed keep it confidential as if they were that party;

10.3.2 with the written consent of the other party;

10.3.3 to the extent that the disclosure is required by law; and

10.3.4 in the case of the Buyer, to: (i) its auditors, (ii) any Government or regulatory authority having jurisdiction over it (including by way of a funding agreement); and (iii) Arts Council England.

10.4 No announcement, or other publicity in connection with the subject matter of this agreement, shall be made by the Seller at any time or shall, subject to Clause 10.2,

be made by the Buyer prior to Completion or (if earlier) the lapse of the Option. On Completion the Buyer (only) shall (with the consent of the Seller, such consent not to be unreasonably withheld or delayed) be permitted to make a press announcement concerning the purchase of the Works in which the Consideration (but not the identity of the Seller) may be made public. In the event of the lapse of the Option, the Buyer shall be permitted to make a press announcement of the fact that it has failed to acquire the Works.

- 10.5 [The parties acknowledge that the Buyer is subject to the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**) and agree that if Buyer receives any request under the FOIA or EIRs for information relating to this agreement it will, prior to responding, notify the Seller of the same and of its proposed response to the same. The Buyer will give consideration to any reasonable representations made by the Seller in relation to the proposed response before submitting the same, provided always that it is agreed that the ultimate form of response is the sole responsibility of the Buyer and at its complete discretion.]¹⁰

11. FURTHER ASSURANCE

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as the other party may reasonably require for the purpose of giving full effect to this agreement. For the avoidance of any doubt, this Clause 11 does not entitle the Seller to require the Buyer to exercise the Option. The Option is exercisable at the Buyer's sole and complete discretion.

12. ASSIGNMENT

Neither party shall be entitled to assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement (or any other document referred to in it).

13. ENTIRE AGREEMENT

- 13.1 This agreement (together with the documents referred to in it) constitutes the entire agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements and understandings between them, whether written or oral, relating to their subject matter.

- 13.2 Nothing in this Clause 13 shall limit or exclude any liability for fraud.

14. VARIATION AND WAIVER

- 14.1 No variation of this agreement shall be effective unless it is in writing and signed by or on behalf of each party (or their authorised representatives).

- 14.2 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further

¹⁰ Drafting Note: To consider whether this clause should be included, depending on the status of the Buyer.

exercise of that or any other right or remedy. A waiver of any right or remedy under this agreement or by law is only effective if it is in writing.

- 14.3 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. COSTS

- 15.1 Except as expressly provided in this agreement, each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this agreement (and any documents referred to in it).

- 15.2 Notwithstanding the provisions of Clause 15.1, the parties may agree alternative arrangements relating to the payment of the costs and expenses referred to in Clause 15.1.

16. NOTICES

- 16.1 A notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post, recorded delivery or special delivery in each case to the relevant party as follows:

Seller	Buyer
Name:	Name:
Address:	Address:
[Fax No:]	[Fax No:]
[Email:]	[Email:] ¹¹

- 16.2 Delivery of a notice is deemed to have taken place (provided that all other requirements in this Clause 16 have been satisfied) if delivered by hand, at the time the notice is left at the address, [or if sent by fax, at the time of transmission]¹², or if sent by post on the second Business Day after posting, [or if sent by email at the time of transmission]¹³ unless such deemed receipt would occur outside business hours (meaning 9:00 am to 17:00 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), in which case deemed receipt will occur when business next starts in the place of receipt (and all references to time are to local time in the place of receipt).

- 16.3 This Clause 16 does not apply to the service of any proceedings or other documents in any legal action.

¹¹ Drafting Note: delete unless the parties elect to allow fax or email as a means of serving notice.

¹² Drafting Note: delete unless the parties elect to allow fax as a means of serving notices.

¹³ Drafting Note: delete unless the parties elect to allow email as a means of service notices.

17. SEVERANCE

- 17.1 If any provision of this agreement or part-provision of this agreement is or becomes invalid, unenforceable or illegal, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 17.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

19. COUNTERPARTS

This agreement may be executed in two counterparts, each of which when executed shall constitute a duplicate original, but the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of this agreement (but, for the avoidance of doubt, not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the other with an original counterpart as soon as reasonably possible thereafter.

20. INADEQUACY OF DAMAGES

The Seller acknowledges and agrees that damages alone would not be an adequate remedy for breach of Clauses 3.2, 5, 8, 9.1.4, 10, 11 and 12 by the Seller. Accordingly, the Buyer will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of such clauses by the Seller.

21. GOVERNING LAW AND JURISDICTION

- 21.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 21.2 Each party irrevocably agrees that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims)¹⁴.

¹⁴ Drafting Note: The parties may include a provision entitling either party to refer a dispute to arbitration if this is preferable.

This agreement has been entered into on the date stated at the beginning of it.

Signed by, for and on behalf of <i>[insert Seller name]</i>	
Position	
Signature	
Date	

Signed by, for and on behalf of <i>[insert Buyer name]</i>	
Position	
Signature	
Date	

Schedule 1

Part A

The Works

[Insert Description of Works and include a detailed photograph or photographs of the Works]

Part B

Consideration

[Option 1 - The Consideration payable for the Works shall be the sum of £[●].]¹⁵

[Option 2 - The Consideration payable for the Works shall be the sum of [●] payable in [●].]¹⁶

[Option 3 – The Consideration payable for the Works shall be the sum of [●].¹⁷ In order to arrive at the [Pounds Sterling] amount of any Consideration, any Consideration expressed in another currency shall be converted into [Pounds Sterling] at an exchange rate which shall comprise the average of the final selling rates of Pounds Sterling for the currency in which the Consideration is expressed, as quoted by [xxx] Bank plc, in London, England as of the close of business on the last business day immediately prior to the date of Completion.]

The Consideration is stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Buyer following delivery of a valid VAT invoice.¹⁸ The Seller shall indemnify the Buyer against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Buyer at any time in respect of the Seller's failure to account for, or to pay, any VAT relating to payments made to the Seller under this agreement.

¹⁵ Drafting Note: for use where the Consideration is to be specified and paid in pound sterling.

¹⁶ Drafting Note: for use where the Seller purchased the Works in a currency other than sterling, the Seller can provide proof that they did so, and the Buyer is content to pay the Consideration in that other currency, which should also be stipulated.

¹⁷ Drafting Note: for use where the Seller purchased the object in a currency other than sterling, the Seller can provide proof that they did so, and the Buyer is content to pay in sterling and bears the exchange rate risk.

¹⁸ Drafting Note: The parties may elect for an alternative margin scheme VAT-inclusive consideration, to which no further VAT would be added.

Schedule 2

First Condition Report

Schedule 3

Form of the Exercise Notice

To: [■] (Seller)

Dated: [●]

Terms defined in this Exercise Notice shall have the meaning given to them in the agreement between the Seller and [■] (Buyer) dated [●] 20[●] (agreement), unless the context otherwise requires.

We, the Buyer and the holder of the Option in respect of the Works on the terms and subject to the conditions set out in the agreement, hereby:

1. exercise the Option in accordance with Clause 6 of the agreement; and
2. propose that Completion takes place on [*insert date no less than five (5) and no more than ten (10 Business Days after the date of this Exercise Notice)*] in accordance with the terms of the agreement.
3. confirm that we hold the Consideration required to purchase the Works.

Signed by, for and on behalf of <i>[insert Buyer name]</i>	
Position	
Signature	
Date	

Form of the Transfer Deed

THIS DEED is made on
20[■]

BETWEEN

- (1) [■] (**Seller**); and
- (2) [■] (**Buyer**).

AND IS SUPPLEMENTAL TO

an Option Agreement dated 20[■] between the Seller and the Buyer (**Option Agreement**).

NOW THIS DEED WITNESSES as follows:

1. Words and phrases defined or otherwise interpreted in the Option Agreement and not otherwise defined in this Deed shall have the same meaning when used in this Deed. Words and phrases defined in this Deed shall have the meaning ascribed to them herein when used in this Deed.
2. The Seller hereby transfers with full title guarantee all rights, title and interest in and to the Works to the Buyer free from all Encumbrances.
3. Risk in and title to the Works will pass to the Buyer on the date of this Deed.
4. The Seller warrants and represents to the Buyer on the date of this Deed, subject to any specific disclosures disclosed in writing by the Seller to the Buyer prior to the date of this Deed, that:
 - 4.1 it is the sole legal and beneficial owner of the Works and the Works are free from any Encumbrances;
 - 4.2 it has full power, capacity and authority to:
 - 4.2.1 enter into and to perform this Deed; and
 - 4.2.2 transfer the legal and beneficial ownership in the Works to the Buyer;
 - 4.3 this Deed is executed by a duly authorised representative of the Seller and that, once duly executed, this Deed will constitute the Seller's legal, valid and binding obligations;
 - 4.4 it has no knowledge of any Encumbrances (threatened or pending) nor knowledge of any facts or circumstances likely to give rise to any Encumbrances;
 - 4.5 having made all due and reasonable enquiries in accordance with Good Industry Practice, it is not aware of any challenges or disputes (pending or threatened) relating to the provenance of the Works and it has provided the Buyer with all information concerning the provenance of the Works in the Seller's control or possession and has notified the Buyer in writing of any and all concerns enquiries, claims or other form of

expression of which it is aware that are or have been expressed howsoever by third parties in relation to the ownership and/or provenance of the Works;

- 4.6 to the best of the Seller's knowledge, information and belief:
- 4.6.1 the Works have not been imported into or exported from any country contrary to its laws; and
 - 4.6.2 the Works were originally created by [●]; and
- 4.7 good and marketable title to the Works will on Completion pass to the Buyer free from any Encumbrances such that, upon Completion, the Buyer has good and valid title and the exclusive and unrestricted right to possession of the Works.
5. The Seller agrees to indemnify and keep indemnified the Buyer against all losses damages and expenses arising from a breach of the Seller's representations and warranties in clause 4 above and in relation to any breach of clause 4.6.2 of which the Buyer becomes aware within a period of twelve (12) months from the date of this Deed, the Buyer shall be entitled to serve written notice on the Seller demanding repayment of the Consideration which shall be due and payable by the Seller to the Buyer as a debt within twenty (20) Business Days of service of such notice. The Buyer shall deliver the Works to the Seller on repayment of the Consideration.
6. This Deed may be executed in two counterparts, each of which when executed shall constitute a duplicate original, but the counterparts shall together constitute the one Deed. Transmission of an executed counterpart of this Deed (but, for the avoidance of doubt, not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Deed. If either method of delivery is adopted, without prejudice to the validity of the Deed thus made, each party shall provide the other with an original counterpart as soon as reasonably possible thereafter.
7. This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof the parties hereto have executed this instrument as a Deed on the date first before written