



**The Guild, Inc.**

## **ARTWORK PUBLISHING AGREEMENT**

This agreement, dated \_\_\_\_\_, between The Guild Inc., a Delaware Corporation, (“THE GUILD,” “GUILD,” “we,” “us,” or “our”) and the undersigned artist (“artist,” “you,” or “your”), establishes the terms on which The Guild will publish and offer for sale giclée prints of the original work(s) of art (hereinafter the “Artwork”) identified in Schedule A to this agreement, which is attached hereto and hereby incorporated by reference. This agreement applies only to the Artwork and does not alter any other agreement The Guild may have with you. The Guild and artist are referred to herein at times collectively as the “parties” and individually as a “party.” The parties agree as follows:

### **1. Production**

The Guild will cause a signed and numbered edition of giclée prints of the Artwork to be made in the quantities set forth in Schedule A. Such reproductions shall be referred to, hereinafter, as “the giclées.” Artists’ proofs will be sent to you at our expense for your review prior to offering the giclées for sale, unless you are a winner in the “Art of Inspiration” Print Competition sponsored by The Guild, in which case The Guild reserves the right to proof all giclées on your behalf, due to time constraints involved. Finished giclées will be sent to you for signing, then you will return them to us or, at our request, to our printer for fulfillment. The Guild or its printer will maintain an inventory and numbering system and ship the giclées to customers.

### **2. Pricing**

For each giclée, The Guild, in its sole discretion, will determine the price we will charge to our customers (“retail price”). You may suggest retail prices for your work, but The Guild reserves the final right to set, change, increase, or decrease retail prices, including the right to sell at a discount from time to time to qualified trade professionals or in retail promotions. The formula upon which your royalty calculations are made, as set forth in paragraph (3) of this agreement, will remain the same regardless of any reductions or increases in retail price.

### **3. Compensation; Audit rights**

3.1 In consideration of this agreement and of the rights and interests hereby conveyed and granted, The Guild agrees to pay artist the following royalties in respect of the Artwork:

3.1.1 Ten percent (10%) of the standard listed retail selling price of the giclée(s) (excluding customs duties, sales or use taxes and other charges we add for expenses as permitted in this agreement) net of any returns.

3.2 We will mail you a check for your royalty payments within approximately thirty (30) days from the date that the work is shipped by The Guild or its printer to the customer, unless it has been returned by the customer for credit or refund.

3.3 Artist or a certified public accountant in artist’s behalf may, at artist’s expense, at reasonable intervals (but not more frequently than once each calendar year), examine The Guild’s books insofar as same contain data of concern to artist, during The Guild’s usual business hours and upon thirty (30) days’ written notice, for the purpose of verifying the accuracy of any statement or payment submitted to artist hereunder. The Guild’s books relating to activities during any accounting period may only be examined as aforesaid during the six (6) month period following receipt by artist of the payment for such accounting period.

### **4. Communications Between Artist and The Guild**

4.1. The Guild will communicate with you primarily via e-mail, via our Artist Extranet, and occasionally via phone or U.S. mail. You agree to facilitate all such communications by:

4.1.1. Supplying us with, and maintaining, an active e-mail address, and checking your e-mail regularly.

4.1.2. Maintaining a computer with a connection to the Internet and learning how to use the Artist Extranet for any uses we may specify.

- 4.2. The Guild agrees to provide instructions to you on using the Extranet, and access to telephone support and assistance on its use during our normal business hours.

#### **5. Packaging & Shipping**

- 5.1. The Guild or its authorized printer will package the giclées and ship to our customers. If a giclée is damaged or destroyed in transit and our shipping agent denies liability due to improper or inadequate packaging, The Guild will bear the loss.
- 5.2. We will pay shipping and insurance charges directly to carriers with which we have arranged direct payment.
- 5.3. At your own expense, you shall provide the Artwork to The Guild or, if we so request, directly to our printer in order to create the giclée. You and The Guild mutually agree that you know best how to pack the Artwork to avoid damage in shipment. You accept the responsibility to pack each item properly. If the Artwork is damaged in transit and the carrier denies the claim for damage for any reason, you alone shall bear the loss. Once the giclée has been created we will return the Artwork to you at our expense.

#### **6. Returns**

- 6.1. We reserve the right, from time to time, to establish and modify such policies regarding customer returns as we may deem necessary or desirable. No royalty will be credited to your account for giclées returned to us for any reason.
- 6.2. We agree to inspect returned items promptly and, in event of damage during the return process, to hold all shipping material for inspection by the carrier so we may file a claim. If items are damaged by the customer, or because of poor packing by the customer on return, we will not credit the customer for the return and such returns will not be deducted when calculating your royalties.

#### **7. Communications with Customers**

- 7.1. Orders received from customers, and all information about those orders and customers, are the property of The Guild. For the Term and for a period of twelve (12) months following the expiration of this agreement, you agree not to solicit our customers to purchase directly from you.
- 7.2. To preserve customer privacy rights, you agree to have no contact directly with customers, for any reason, unless we explicitly request and authorize you to do so.

#### **8. Grant of Rights**

- 8.1 Artist hereby grants to The Guild, in the Territory and (unless otherwise provided herein) for the Term, the following exclusive rights:
  - 8.1.1 To reproduce, resize and publicly display the Artwork for the purposes set forth in Schedule A;
  - 8.1.2 To reproduce and resize as necessary the giclées including, without limitation, by means of photomechanical reproduction, photography, videography and any other means of reproduction now known or hereafter invented;
  - 8.1.3 To sell and distribute the giclées in any and all channels of trade; and
  - 8.1.4 To publicly display the giclées by any means.
- 8.2. Artist hereby grants to The Guild the nonexclusive, royalty-free right to use and publish and to permit others to use and publish artist's name (including any professional name heretofore or hereafter adopted by artist), likeness and biographical material, or any reproduction or simulation thereof in connection with any advertising or promotion of The Guild, Inc. and/or in connection with The Guild's exercise of any and all rights under this agreement.
- 8.3. To the extent deemed derivative works, The Guild shall exclusively retain all derivative rights in and to any photographs or other pictorial representations of the Artwork, including the giclées, made by The Guild or its representatives. Artist retains all rights not otherwise granted herein.
- 8.4 The "Territory" shall be the world.

#### **9. Representations and Warranties**

You assure us that:

- 9.1 The Artwork is an original work created and owned entirely by you.
- 9.2 The Artwork does not infringe upon any Rights, worldwide, of any other work or other Rights of any person, firm or corporation. The term "Rights" includes but is not limited to copyrights, trademarks, trade names, service marks, trade dress [i.e., "look and feel"], moral rights, rights of privacy or publicity, patents and rights of integrity and attribution.
- 9.3 The Artwork does not violate any criminal statute.

- 9.4 You have not sold or transferred any Rights in the Artwork, to anyone, and no other person or entity holds any Rights in or to the Artwork.
- 9.5 The Artwork has never been published.
- 9.6. You have complete authority to grant us the rights conveyed in this Agreement.
- 9.7 The rights you convey in this agreement are exclusive during the Term.
- 9.8 During the Term you will not license the Artwork to any third party for reproduction on paper, canvas, print on demand, limited edition, offset printing or any other medium, or for any other purpose, reasonably within the scope of the rights you are granting to us.
- 9.3. You will indemnify and hold The Guild, its assigns, licensees and its and their directors, officers, shareholders, agents and employees harmless from any and all liability, claims, demands, loss and damage (including reasonable counsel fees and court costs) arising out of or connected with or resulting from any breach or alleged breach of any of the warranties, representations or agreements you make in this agreement. Such indemnity shall also extend to the deductible under The Guild's errors-and-omissions policy without regard to judgment or settlement.
- 9.4 You agree that irreparable harm and damage will result to The Guild if you breach of any of these warranties and representations.
- 9.5 In its entirety, this paragraph 9 shall survive any termination or expiration of this agreement.

**10. Term; Termination; Notices**

- 10.1 The term of this agreement (the "Term") shall commence on the date first above written and shall continue for a period of three (3) years. Thereafter, this agreement shall be automatically renewed for consecutive one-hundred eighty (180) day periods, unless either party provides the other with written notice of termination at least thirty (30) days before the expiration date of the then-current Term.
- 10.2 Artist shall have the right to terminate this agreement at any time if The Guild breaches any of its obligations hereunder and such breach is not cured within thirty (30) days after receiving written notice from artist. The Guild may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to artist.
- 10.3 Notwithstanding the termination of this Agreement for any reason, artist hereby grants The Guild such limited, nonexclusive licenses in and to the Artwork as may be necessary to sell all giclées that may remain in inventory, until such inventory is exhausted. The Guild shall pay royalties on such sales, as provided herein. Unless specifically provided herein, however, no obligations of The Guild other than the obligation to pay royalties on sales from inventory, shall survive termination of this agreement.
- 10.4 All notices or other communication required to be sent to The Guild shall be in writing and sent by certified mail, return receipt requested, postage paid, or by overnight delivery service, to the addresses shown below:

THE GUILD, INC.  
Attn: Michael Baum  
931 E. Main Street, Suite 9  
Madison, WI 53703

**11. Miscellaneous**

- 11.1. Nothing in this Agreement shall be construed or deemed to create any partnership, agency, joint venture or employer-employee relationship between the Parties. For all purposes of this agreement, each party acknowledges and agrees that the other is an independent contractor. The artist is responsible for filing his/her own tax returns and all other requirements normal to an independent business person.
- 11.2. This Agreement shall be deemed to have been made in the State of Wisconsin, and it shall be governed by the substantive laws of the State of Wisconsin without regard to any applicable conflict of laws provisions. The parties submit to jurisdiction in the state and federal courts sitting in Dane County, Wisconsin and hereby waive any jurisdictional, venue or inconvenient forum defenses otherwise available.
- 11.3. This agreement is binding on the parties and their respective heirs, legatees, executors, successors and assigns. This agreement is the entire agreement between the Parties and supersedes all prior written or oral agreements between the parties relating to the subject matter hereof. No amendment to this agreement shall be binding or enforceable unless reduced to a writing executed by the parties hereto and specifically referring to this agreement. If any portion of this agreement is found to be void or unenforceable, the remaining portion shall be enforceable with the invalid portion removed, giving all reasonable construction to permit the essential purposes of the agreement to be achieved; provided that

no such severability shall be effective if it substantially changes the economic benefit of this agreement to either party. The parties' various rights and remedies hereunder shall be construed to be cumulative.

- 11.4. The failure of either party to require the performance of any item or obligation of this agreement, or the waiver by either party of any breach of this agreement, shall not act as a bar to subsequent enforcement of such term of obligation or be deemed a waiver of any subsequent breach.
- 11.5. The Guild shall have the right to assign this agreement and any of its rights hereunder to any parent, subsidiary or affiliated person, firm or corporation, any entity into which or with which The Guild may merge or consolidate, or any purchaser of substantially all of The Guild's stock or assets. The Guild shall also have the right to enter into sub-publishing, collection, print or other agreements with respect to the giclées with any person, firm or corporation for any one or more countries of the world. Artist may not assign this agreement without The Guild's prior written consent, which shall not be unreasonably withheld.
- 11.6 Artist agrees to execute and deliver to The Guild all documents which may be required to effectuate the intent of this agreement, and, in the event that artist fails to do so within ten (10) days following artist's receipt of notice requesting same, artist does hereby irrevocably empower and appoint The Guild, or any of its officers, artist's true and lawful attorney (with full power of substitution and delegation) in artist's name, and in artist's place and stead, or in The Guild's name, to take and do such action, and to make, sign, execute, acknowledge, deliver, and record any and all instruments or documents which The Guild, from time to time, may deem desirable or necessary to vest in The Guild, its successors, assigns and licensees, any of the rights granted by artist hereunder.
- 11.7 If the performance by either party of its obligations hereunder, is affected by reason of fire, flood, casualty, lockout, strike, labor conditions, unavoidable accident, national calamity, epidemic, mechanical or other breakdown, riot, enactment of law or by any similar cause (collectively referred to as "Unavoidable Delay"), such party's obligations herein shall be suspended during the period of such Unavoidable Delay.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement the day and year first above written.

**AGREED AND ACCEPTED:**

PROPOSED: **The Guild, Inc.**

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
SIGNATURE: \_\_\_\_\_

ACCEPTED: **Artist**

SIGNATURE \_\_\_\_\_  
NAME (print) \_\_\_\_\_  
COMPANY NAME (if any) \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_  
STATE/PROVINCE \_\_\_\_\_ ZIP/POSTAL CODE \_\_\_\_\_  
COUNTRY \_\_\_\_\_  
PHONE \_\_\_\_\_ FAX \_\_\_\_\_  
EMAIL ADDRESS \_\_\_\_\_  
WEBSITE URL \_\_\_\_\_

## **SCHEDULE A**

Artist name:

Description of the Artwork:

Number of giclées to be produced: