

# DIGITAL ART HOLDINGS™

## MEMBERSHIP AS A SERVICE AGREEMENT

This Membership as a Service Agreement (“Agreement”) is between Digital Art Holdings, LLC (“DAH”) and the person or entity that has clicked on the “AGREE” button at the end of this Agreement (“you,” “your” or “yours”). This Agreement describes the terms under which you may receive and use certain digital art content, and obtain certain services and benefits from DAH under the terms of this Agreement. By clicking on the “AGREE” box at the bottom of this Agreement, you are agreeing to comply with and be bound by all the terms of this Agreement.

YOU REPRESENT THAT YOU ARE OVER EIGHTEEN (18) YEARS OF AGE, THAT YOU ARE A RESIDENT OF THE UNITED STATES, THAT YOU MAY LEGALLY ENTER INTO THIS AGREEMENT, THAT YOU OR YOUR AFFILIATES DO NOT AND SHALL NOT PROVIDE GOODS OR SERVICES THAT ARE COMPETITIVE WITH OR WOULD REASONABLY BE SEEN AS A SUBSTITUTE FOR ANY GOODS OR SERVICES PROVIDED BY DAH, AND THAT YOU AGREE WITH ALL THE TERMS OF THIS AGREEMENT.

### 1. MEMBERSHIP AND SERVICES.

**A. Benefits.** Subject to your timely performance under this Agreement, including without limitation payment of Fees (pursuant to the corresponding order confirmation, as both terms are defined below), DAH shall make available to you the following services and products (collectively, “Benefits”) during the term of this Agreement: On or about the fifteenth (15<sup>th</sup>) business day of each calendar month, DAH shall provide to you via digital download a new collection of content (“Content”) consisting of some or all of the following: **(i) “Clipart”** consisting of images or illustrations that do not contain text; **(ii) “Templates”** consisting of images or illustrations that do contain text; and **(iii) “Fonts”** consisting of typefaces for text. The number and kinds of Content that DAH shall provide shall be determined solely by DAH.

**B. New and Changed Benefits.** Benefits may change over time, as determined by DAH, and so the foregoing Benefits may be added to, subtracted from, or otherwise modified. DAH encourages you to visit the [www.digitalartsolutions.com](http://www.digitalartsolutions.com) website to stay informed about the Benefits offered under this Agreement. For the elimination of doubt, the parties understand and agree that the terms of the Agreement shall apply to all future Benefits, including Content, without any additional agreement of the parties with respect thereto.

### 2. DESIGN PROGRAMS.

**A. Use of Content.** Content is designed to be usable with a variety of third-party graphic design programs (“Third-Party Graphic Design Programs”) and also with graphic design programs offered by DAH, such as SmartDesigner Pro™ and Rhinestone Designer™ (collectively, “DAH Graphic Design Programs”).

#### **B. Third-Party Graphic Design Programs.**

**1. Third-Party Licenses.** You shall have the sole responsibility to determine whether Content is compatible with and suitable for any particular Third-Party Graphic Design Program used by

you, and DAH shall have no obligation with respect to any such Third-Party Graphic Design Program. You also hereby agree to comply fully with the terms of any license or other agreement provided by any provider of any Third-Party Graphic Design Program, and you hereby agree to indemnify, defend and hold harmless DAH, its officers, directors, owners, agents and affiliates from and against any losses, costs, or damages (including reasonable attorneys' fees) resulting from or in connection with your failure to do so.

**2. Use of Content under Third-Party Graphic Design Programs.** If you use Content together with or through a Third-Party Graphic Design Program, then the provisions of **EXHIBIT A ("USE OF CONTENT UNDER THIRD-PARTY GRAPHIC DESIGN PROGRAMS")** apply to you.

**C. DAH Graphic Design Programs.** If you use Content together with or through a DAH Graphic Design Program, then the provisions of the corresponding "License Agreement" or other agreement between you and DAH govern your use of that Content.

### **3. ACCOUNT, PASSWORD AND SECURITY.**

In order to access and use the Content, you must first register with DAH. You may register with DAH and create a personal account ("**Account**") by fully and accurately completing the sign up page and providing to DAH such fully accurate personal information as DAH may reasonably require, including without limitation your name, your email address, a password (selected by you, subject to DAH's security and other requirements), your zip code and payment information (collectively, "**Account Information**"). When you create an Account, you will also be provided an order confirmation ("**Confirmation**") that shall include the Fees payable by you. You agree to keep all Account Information updated and correct. Your Account is personal to you, and you may not share it or allow it to be used by anyone other than you. You agree to indemnify DAH and defend DAH from and against any losses or liabilities arising from any disclosure or misuse of your Account Information.

### **4. RESTRICTIONS.**

You and any of your employees, officers, directors or authorized agents (each a "**User**") shall not (and shall not permit any third party to): **(a)** remove, obscure or alter any proprietary notices or labels on the Content, or any component thereof; or **(b)** attempt to gain unauthorized access to the Content or related systems or networks. The Content is and shall remain the sole property of DAH and its licensors.

### **5. FEES.**

You shall pay to DAH all fees ("**Fees**") for your use of the Content as described in each Confirmation as provided to you via your Account. Such payments shall be made via STRIPE® or such other third party payment system as directed by DAH. Sales and use tax, VAT or GST are your sole responsibility, and you hereby acknowledge and agree that the Fees are exclusive of all such taxes. DAH RESERVES THE RIGHT TO SUSPEND OR TERMINATE YOUR ACCESS TO THE CONTENT IN THE EVENT OF YOUR FAILURE TO MAKE ANY FEE PAYMENT TO DAH WHEN SUCH PAYMENT IS DUE. DAH WILL ALSO TERMINATE YOUR ACCESS TO THE CONTENT UPON THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

### **6. WARRANTY DISCLAIMER.**

DAH PROVIDES THE CONTENT AND ANY OTHER GOODS AND SERVICES ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY. DAH HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR

STATUTORY, ARISING FROM COURSE OF DEALING, USAGE OR TRADE OR OTHERWISE, AND INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR TITLE. Some jurisdictions do not allow certain warranty disclaimers, so the foregoing may not apply to you.

**7. LIMITATION OF LIABILITY, INDEMNITY AND ENFORCEMENT.**

**A. Limitation of Liability.** IN NO EVENT SHALL DAH BE LIABLE TO YOU OR ANY PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER AND WHEREVER ARISING. IN NO EVENT SHALL THE TOTAL LIABILITY OF DAH UNDER THIS AGREEMENT OR REGARDING THE CONTENT EXCEED ONE HUNDRED DOLLARS (\$100). Some jurisdictions do not allow certain limitations of damages, so the foregoing may not apply to you.

**B. Indemnity.** You hereby agree to indemnify, defend and hold harmless DAH, its officers, directors, owners, agents and affiliates from and against any losses, costs, or damages (including reasonable attorneys' fees) resulting from or in connection with any claims alleging any injuries or damages to persons or property, any losses or liability arising from or in connection with your acts or omissions under this Agreement, any damage to DAH's good name or reputation, or any willful or negligent conduct by you.

**C. Injunctive Relief.** It is understood and agreed that, notwithstanding any other provisions of this Agreement, breach of the provisions of this Agreement by you will cause DAH irreparable damage for which recovery of money damages would be inadequate, and that according DAH shall be entitled to timely injunctive relief to protect DAH's rights under this Agreement in addition to any and all remedies available at law.

**D. Enforcement.** YOU UNDERSTAND AND AGREE THAT CONTENT IS THE VALUABLE, COPYRIGHTED WORK OF DAH AND ITS LICENSORS. DAH AND ITS AGENTS REGULARLY MONITOR INTERNET TRAFFIC AND WEBSITES FOR COPYRIGHT INFRINGING ITEMS, AND DAH ENFORCES ITS RIGHTS TO THE FULL EXTENT OF THE LAW.

**8. TERM AND TERMINATION.**

**A. Term.** This Agreement will commence on the date you clicked on the "AGREE" button at the end of this Agreement, and shall continue for the respective period as set forth in the corresponding Confirmation, unless earlier terminated as provided below.

**B. Termination.** Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party materially breaches any provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice (but subject to **SECTION 5 ("FEES")**). Upon any termination of this Agreement other than for DAH's uncured material breach, you shall pay DAH any Termination Fees then due as described in **EXHIBIT B ("FEES AND PAYMENT")**.

**C. Effect.** Upon expiration or termination of this Agreement for any reason all rights granted to you herein will immediately cease and DAH will cease to provide any future Benefits. Upon any

expiration or termination of this Agreement, you must also delete your Account, and if you have not deleted your account, DAH shall delete your Account.

#### **9. JURISDICTION AND VENUE.**

This Agreement shall be subject to the laws of the state of Arizona as apply to contracts entered into and performed in Arizona between Arizona residents and without regard to conflicts of laws principles. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, before a single arbitrator who shall be selected in accordance with such rules. The location of the arbitration shall be Phoenix, Arizona, and the fee of the arbitrator shall be shared equally by the parties. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Subject to the foregoing, the state and federal courts located in Phoenix, Arizona, shall have sole jurisdiction over any dispute arising hereunder, and the parties hereby irrevocably consent to the personal jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed.

#### **10. MODIFICATIONS TO AGREEMENT.**

DAH may amend this Agreement upon notice to you as follows: **(a)** if you are on the Monthly Plan, upon thirty (30) days' notice; and **(b)** if you on the Annual Plan, upon no less than thirty (30) days' notice, with such amendment to take effect upon the expiration of the then-current twelve (12) month period. Otherwise, this Agreement may not be amended other than in writing, and any purported oral amendment hereto shall have no effect.

#### **11. NOTICES AND PERMISSIONS.**

If you have any questions or comments about DAH or this Agreement, or if you wish to request any special permissions from DAH, you may contact DAH at the street and email addresses appearing at the bottom of this Agreement.

#### **12. GENERAL.**

Neither this Agreement, nor any rights hereunder, may be assigned by operation of law or otherwise, in whole or in part, by you without the prior, written permission of DAH. Any purported assignment without such permission shall be void. This Agreement, including corresponding access to your Account Information, may be assigned by DAH in whole or in part without notice. This Agreement may not be amended other than in writing, and any purported oral amendment hereto shall have no effect. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement. Any waiver of any rights of DAH under this Agreement must be in writing, signed by DAH, and any such waiver shall not operate as a waiver of any future breach of this Agreement. In the event any portion of this Agreement is found to be illegal or unenforceable, such portion shall be severed from this Agreement, and the remaining terms shall be separately enforced. Your use of the Content shall at all times comply with all applicable laws, rules and regulations. This Agreement is the entire agreement between the parties with respect to this subject matter, and supersedes any and all prior or contemporaneous or additional communications, negotiations or agreements with respect thereto. YOU AND DAH AGREE

THAT ANY CAUSE OF ACTION BY YOU ARISING OUT OF OR RELATED TO THIS AGREEMENT MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

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Digital Art Holdings, LLC  
All Rights Reserved

If you have any questions or comments about DAH or this Agreement, or if you wish to request any special permissions from DAH, you may contact DAH at:

**Digital Art Holdings, LLC**

1830 West University Drive  
Suite 106  
Tempe, AZ 85281

[Info@DigitalArtSolutions.com](mailto:Info@DigitalArtSolutions.com)

**EXHIBIT A**  
**USE OF CONTENT UNDER THIRD-PARTY GRAPHIC DESIGN PROGRAMS**

**1. DEFINITIONS.**

*“Image File”* means any electronic file that contains Content.

*“Modified Content”* shall have the meaning assigned to it in **Subsection 3(A)** of this **EXHIBIT A (“USE OF CONTENT UNDER THIRD-PARTY GRAPHIC DESIGN PROGRAMS”)**.

*“Permitted Uses”* shall have the meaning assigned to it in **Subsection 3(E) (“Permitted Uses”)** of this **EXHIBIT A (“USE OF CONTENT UNDER THIRD-PARTY GRAPHIC DESIGN PROGRAMS”)**.

*“Prohibited Uses”* shall have the meaning assigned to it in **Subsection 3(F) (“Prohibited Uses”)** of this **EXHIBIT A (“USE OF CONTENT UNDER THIRD-PARTY GRAPHIC DESIGN PROGRAMS”)**.

**2. LICENSE GRANT.** Subject to your timely performance under this Agreement, including without limitation payment of Fees, DAH hereby grants you a worldwide, non-exclusive, non-transferable license, without the right to grant sublicenses, to install the Content on no more than two (2) computers owned or controlled by you and use such Content through a Third-Party Design Program, and solely for Permitted Uses. All other rights in and to the Content, including, without limitation, all copyright and other intellectual property rights, are retained by DAH or its licensors.

**3. LIMITATIONS.** As a condition to the license granted in **SECTION 2 (“LICENSE GRANT”)**, you agree as follows:

**A.** You must materially modify the Content before any use or distribution thereof. Without limiting the generality of the foregoing, in carrying out such modifications, you may add additional images or text, and you may change colors, shapes or the design of the Content, which shall thereupon be deemed **“Modified Content.”** You will own only the modifications you make, and the underlying Content shall at all times belong solely to DAH or its licensors, subject only to the licenses expressly granted herein.

**B.** You must incorporate Modified Content into another tangible product prior to distribution. Such product may include, without limitation: T-shirts, hoodies and other clothing; personal accessory items; glasses, plates and other food and drink related items; posters and printed materials; promotional products, banners, signs, awards, vehicle graphics, cases, containers and covers; hobby items; and stationery.

**C.** Any presentation of such products bearing Modified Content on any website shall be displayed with a resolution no greater than seventy-two (72) dots per inch at an absolute size of four hundred (400) pixels in any one (1) direction.

**D.** You may sell pre-manufactured products bearing Modified Content through a website, a “bricks-and-mortar” retail store, or any other sales channel, including without limitation home-based businesses.

**E. Permitted Uses.** The following are the only **“Permitted Uses”** under this Agreement:

**(i)** advertising and promotional projects, including printed materials, product

packaging, presentations, film and video presentations, commercials, catalogues, brochures, promotional greeting cards and promotional postcards;

(ii) production, design, resale and distribution of imprinted or decorated products or surfaces; and

(iii) any other uses approved beforehand and in writing by DAH.

**F. Prohibited Uses.** Any use of the Content that is not a Permitted Use is not permitted, and hence is a “**Prohibited Use.**” Without limiting the generality of the foregoing, the following are examples of Prohibited Uses:

(i) using any Content as part of a trademark, trade name, business name, service mark, or logo;

(ii) reselling or redistributing the Content in the form of an Image File as part of a design application, website, clipart collection, or digital image collection, whether online or not, including, without limitation, website templates, Flash templates, business card templates, electronic greeting card templates, brochure design templates; or making Content otherwise available in a manner such that allows extracting, accessing or reproducing the Content as an Image File;

(iii) using any Content in a web-based software application or webpage that enables a user to select Clipart, Templates or Fonts and create a unique graphic by submitting text and design changes;

(iv) using any Content in a webpage that enables the submission of design changes or a webpage that enables the selection of a Template or Clipart and contains a form that enables the submission of design changes or the placement of an order;

(v) using any Content in a web-based software application or webpage that enables a user to select Content and create a product rendering or product sample;

(vi) using the Content: **(a)** to produce a heat transfer that will be sold as a standalone heat transfer without being placed on a decorated product; or **(b)** to produce an embroidery file that will be sold as a standalone embroidery file without being placed on a decorated product;

(vii) displaying Content in a password-protected area of a website;

(viii) using Content in any context that is pornographic, obscene, immoral, infringing, defamatory or libelous in nature, or that would be reasonably likely to bring any person or property reflected in the Content into disrepute;

(ix) removing any notice of copyright, trademark, patent or other proprietary right from any of the Content, or adding any such notice;

**(x)** sublicensing, selling, renting, lending, assigning, or otherwise transferring the Content or the rights granted under this Agreement without the express written permission of DAH;

**(xi)** installing or using the Content on more than two (2) computers at a time without having purchased an additional license from DAH; or posting Content on a network server or web server for use by others;

**(xii)** using, displaying or distributing the Content in an electronic format to be downloaded or distributed via file servers or shared in any peer-to-peer or similar file sharing arrangement;

**(xiii)** distributing Content embedded in an electronic document such as a PDF file as a downloadable file from a website unless the PDF file contains document security that prohibits editing and printing;

**(xiv)** copying or creating any derivative work based on the Content, other than as permitted by this Agreement; or

**(xv)** renting, leasing or granting any security interest in the Content.



**EXHIBIT B**  
**FEES AND PAYMENT**

**1. FEES.**

The Fees payable by you under this Agreement shall depend on the payment plan ("**Plan**") selected by you when you created your Account as indicated in the corresponding Confirmation.

**2. PLAN.** The Plan as of the Effective Date is as follows:

**A. Monthly Plan.**

**(i) Details.** The term is month-to-month, and either you or DAH may terminate this Agreement upon thirty (30) days' written notice without cause.

**(ii) Fees.** The Fees shall be paid each calendar month in advance.

**(iii) Upgrade Assurance.** If you are a licensed owner of Smart Designer Pro™ or Rhinestone Designer™ (not any other DAH Graphic Design Program or a Third-Party Graphic Design Program), any upgrades to SmartDesigner Pro™ or Rhinestone Designer™ that DAH may make available from time to time during your active membership are included for a single license of each program. Upgrades for additional licenses of Smart Designer Pro or Rhinestone Designer will require an additional fee.

**(iv) Reinstatement Fee.** If either you or DAH terminate this Agreement and you wish to reinstate your membership, you will be required to pay a reinstatement fee prior to your membership being reinstated.