

DIGITAL ART HOLDINGS™

LICENSE AGREEMENT

This License Agreement (“Agreement”) is between Digital Art Holdings, LLC (“DAH”) and the person or entity (“you,” “your” or “yours”) that has clicked on the “AGREE” button at the end of this Agreement through the installation program accompanied by this Agreement. This Agreement describes the terms under which you may access, download, modify and use certain software and artwork accompanying this Agreement and owned by DAH or its licensors. By checking 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 OR A PROVINCE OF CANADA IN WHICH THIS AGREEMENT IS ENFORCEABLE AS WRITTEN, THAT YOU MAY LEGALLY ENTER INTO THIS AGREEMENT AND THAT YOU AGREE WITH ALL THE TERMS OF THIS AGREEMENT.

1. **DEFINITIONS.** For purposes of this Agreement, the following terms have the following meanings:

“Art Volume” means any tangible medium containing Content provided by DAH under this Agreement. For this Agreement, the Here for Good Local Fundraising Graphics.

“Clipart” means an image or illustration provided by DAH under this Agreement that does not contain text.

“Content” means any Clipart, Template or Fonts.

“Fees” means any amounts owed or paid to DAH under this Agreement.

“Font” means any typeface provided by DAH under this Agreement.

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

“Modified Content” shall have the meaning assigned to it in **Subsection 2(B)(iv)(a)**.

“Permitted Uses” shall have the meaning assigned to it in **Subsection 2(C) (“Permitted Uses”)**.

“Software” means the current release of the object code version of the Smart Designer Pro™ and Rhinestone Designer™ software owned and licensed by DAH accompanying this Agreement.

“Template” means any image or illustration provided by DAH under this Agreement that also contains text.

2. **SOFTWARE LICENSE AND ACTIVATION.**

A. Grant. Subject to your performance under this Agreement, including the timely payment of corresponding Fees, DAH hereby grants you a worldwide, non-exclusive, non-transferable license, without the right to grant sublicenses, to download (if applicable), install and use the Software and Content solely for Permitted Uses. All other rights in and to the Software and Content, including, without limitation, all copyright and other intellectual property rights, are retained by DAH or its licensors. The Software and Content are the valuable confidential and trade secret information of DAH

and its licensors, and you shall not reverse engineer, decompile, or disassemble any portion of the Software or Content, nor disclose any non-public information with respect thereto, during or after the term of this Agreement.

B. Activation and Use Restrictions.

(i) Software Titles and Art Volumes. Software shall be provided to you initially as a “demo” version until you activate (“**Activate**”) the Software and pay corresponding Fees. You are not required to Activate all Software, but only Activated Software will work outside of a “demo” environment. The Content and the Software are integrated, and designed to work together, but you may use only that Content and Software for which you have paid corresponding Fees and for which you are granted a license herein. Without limiting the generality of the foregoing, your license applies only to the Art Volume selected by you and for which you have paid corresponding Fees. You may not use Content solely together with Software for which you have not paid corresponding Fees, and you may not use more copies of Content than you have copies of Software for which you have paid corresponding Fees.

(ii) Activation. Prior to your first use, you must first Activate the Software. The Activation process is described in the manual accompanying the Software. Unless you Activate the Software, it will not function.

(iii) Use and Seat Restrictions. You may install and use the Software on no more than two (2) computers, subject to the Prohibited Uses and the other terms of this Agreement. You may physically transfer the Software or Content and its archives from one (1) computer to another, in which case you may use the Software and Content on the new computer after you Activate it, but only after you deactivate the copy of the Software and Content from the original computer. Only you are permitted to use the Software or Content, but you may transfer files containing Content or Modified Content to your clients or printers solely for reproduction for Permitted Uses, provided that such parties shall have no further rights with respect to the Content or Modified Content, including the right to further access or extract such Content or Modified Content from any file you provide.

(iv) Limitations. As a condition to the license granted in **Subsection 2(A)**, 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.

C. 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.

D. Prohibited Uses. Any use of the Software or 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 Software or Content, or adding any such notice;

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

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

(xii) using, displaying or distributing the Software or 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 Software, other than as permitted by this Agreement; or

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

E. Audit. You hereby agree to allow DAH to audit your books and records relevant to your performance under this Agreement and your exercise of the licenses granted herein, and to obtain true and correct copies of such books and records, during and after the term hereof. DAH shall give you at least ten (10) days' notice of the exercise of such audit rights, and you agree to cooperate fully with DAH in carrying out such audit.

F. Substitution. DAH may from time to time replace Content and Software with other content or software. In such case, DAH shall notify you of such replacement, and upon such notice this Agreement shall apply to such new content and software (which shall then be deemed Content and Software hereunder), and this Agreement shall no longer apply to the replaced Content and Software, which you hereby agree to cease using immediately, including without limitation any Modified Content.

3. FEES AND PAYMENT.

The fees payable to DAH (the “**Fees**”) shall be as set forth in the corresponding DAH order confirmation or invoice. If you are on a payment plan for the Software, and you fail to pay any Fee when due, in such case DAH may, but it not required to, use its commercially reasonable efforts to notify you and obtain proper payment information. If for any reason, any Fee payment is more than ten (10) days overdue, DAH may, in addition to all its other legal rights, deactivate the corresponding Software and Content or terminate this Agreement entirely. Any late Fee payment shall also bear interest at a prorated rate of one and one-half percent (1.5%) per month, or the highest rate allowed by law, whichever is lower.

4. TERM.

The term of this Agreement will continue until terminated by you or DAH. You may terminate this Agreement with or without cause upon notice. Subject to **SECTION 3 (“FEES AND PAYMENT”)**, DAH may terminate this Agreement for your material breach where such breach has not been cured within ten (10) days following notice to you. Upon the expiration or termination of this Agreement, all licenses granted herein shall immediately terminate, and you shall immediately cease any use or distribution of any product containing any Software or Content.

5. 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 ARTWORK OR THIS WEBSITE 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, or any losses or liability arising from or in connection with your acts or omissions under this Agreement.

C. Enforcement. YOU UNDERSTAND AND AGREE THAT SOFTWARE AND CONTENT ARE 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.

6. 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.

7. DISCLAIMER.

DAH PROVIDES THE SOFTWARE, THE CONTENT AND ANY GOODS AND SERVICES ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY. DAH HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, ARISING FROM COURSE OF DEALING, USAGE OR TRADE, 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.

8. 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 Software and 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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If you have any questions or comments about DAH or this Agreement, you may contact DAH at:

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