

~~DATED 25th February 2008~~

- (1) ANTHONY d'OFFAY
- (2) ANTHONY d'OFFAY LIMITED
- (3) THE BOARD OF TRUSTEES OF THE NATIONAL GALLERIES OF SCOTLAND
- (4) THE BOARD OF TRUSTEES OF THE TATE GALLERY

AGREEMENT

in relation to a donation of
contemporary art

THIS AGREEMENT is made the 25th day of February 2008

BETWEEN:

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- (1) **ANTHONY d'OFFAY** of [REDACTED] ("**Mr d'Offay**" which expression shall include the legal personal representatives of Mr d'Offay or his estate save where expressed to the contrary in this Agreement);
- (2) **ANTHONY d'OFFAY LIMITED**, a company incorporated in England and Wales with registered number 1207794 whose registered office is at 9 Dering Street, London W1S 1AG ("**ADL**");
- (3) **THE BOARD OF TRUSTEES OF THE NATIONAL GALLERIES OF SCOTLAND** (Scottish Charity Number SC003728) established under the National Galleries of Scotland Act 1906 (as amended by The National Heritage (Scotland) Act 1985) having their Administrative Office at The Dean Gallery, Seventy Three Belford Road, Edinburgh EH4 8DS (the "**NGS Board**"); and
- (4) **THE BOARD OF TRUSTEES OF THE TATE GALLERY** (an exempt charity under Schedule 2 of the Charities Act 1993) operating under the Museums and Galleries Act 1992 and having its administrative offices at Tate, Millbank, London SW1P 4RG (the "**Tate Board**").

WHEREAS

- (A) Mr d'Offay and ADL (together the "**Donors**" and individually a "**Donor**") wish to make or procure the making of a donation (the "**Donation**") of the appreciation in the value of certain contemporary art to the National Galleries of Scotland ("**NGS**") and The Tate Gallery ("**Tate**" and together with the NGS the "**Museums**" and individually a "**Museum**")
- (B) The Donors wish the art the subject of the Donation to form the nucleus of a distinct national collection of "artist rooms" of contemporary art which will focus on younger and emerging artists
- (C) The art the subject of the Donation has been brought together over three decades so that contemporary art in specific concentrations might be seen in museums across the United Kingdom
- (D) The Donors wish the Collection (as defined below) to be exhibited widely throughout the UK in addition to London and Edinburgh so that the public, particularly young people and students, will have available to them rooms, or a number of rooms, that can display the work of particular artists in some depth
- (E) The Collection shall be known as "ARTIST ROOMS"
- (F) The NGS Board and the Tate Board wish to accept the art the subject of the Donation
- (G) The parties have agreed that the Donation shall be made and accepted on the terms and conditions set out in this Agreement

NOW IT IS HEREBY AGREED as follows:-

1 Interpretation

1.1 The recitals and the Schedule form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the recitals and the Schedule;

1.2 In this Agreement:-

"Acquisition Criteria" means in relation to any work of art to be acquired for inclusion in the Collection, that such work is a work of contemporary art of a type and quality consistent with the works then comprised in ARTIST ROOMS;

"AR Fund" means the aggregate of the funds to be held as restricted funds in each of the Museums, to be applied solely for the purposes of acquiring works of contemporary art meeting the Acquisition Criteria, for the purposes of inclusion in the Collection and expenses relating to any such acquisition;

"Art" means the works of contemporary art identified in the Schedule;

"Business Day" means a day, not being a Saturday or a Sunday, on which banks are open for commercial business in the City of London;

"Collection" means the Art plus such other works of contemporary art as the Museums shall add thereto less such works of contemporary art comprised in the Collection as the Museums shall dispose of, in each case in accordance with the terms of this Agreement;

"Completion" means the completion of the transfer of the Art in accordance with the terms of this Agreement;

"Donors" means Mr d'Offay and ADL and **"Donor"** means either of them;

"Donors' Representative" shall mean Mr d'Offay for so long as he is alive and of sound mind or, if he shall die or cease to be of sound mind, either of [REDACTED] in each case for so long as [REDACTED] shall be alive and of sound mind and if none of those persons shall be alive and of sound mind, such person as the Museums' Trustees shall nominate; 540

"EOC" has the meaning ascribed thereto in Clause 8.1;

- "Escrow Account"** means a designated money market account established within the client account of [REDACTED] at: [REDACTED]
[REDACTED]
Sort Code : [REDACTED] S40
Account No : [REDACTED]
Account Name: [REDACTED]
- "Escrow Account Letter"** means the letter in the form agreed between the parties and initialled for the purposes of identification, to be entered into between the parties hereto and the Escrow Agent;
- "Escrow Agent"** means [REDACTED] S40
- "Escrow Interest"** has the meaning ascribed thereto in Clause 5.1;
- "Guidelines"** means the guidelines for the conservation, presentation and display of the Works, [REDACTED]
[REDACTED] S43(2)
[REDACTED] in the style of the guidelines for the photographs by Diane Arbus included in the Works, in the form agreed between the parties and initialled for the purposes of identification;
- "Interest Rate"** means two per cent (2%) per annum above the base rate from time to time of The Royal Bank of Scotland plc;
- "Management Committee"** means the committee to be established in accordance with Clause 7;
- "Museums' Boards"** means the NGS Board and the Tate Board and **"Museum Board"** means either of them;
- "Retained Right"** means any copyright in any of the works comprised in the Art which remains vested in the relevant artist together with any other right or restriction attaching to any of such works which has been agreed to by the Donors or either of them (acting reasonably) which does not adversely affect the value of such works, including those noted against such works in the Schedule; and
- "Works"** means the works of contemporary art from time to time comprised in the Collection and **"Work"** means any of them.

1.3 Unless the context otherwise requires, in this Agreement:-

- 1.3.1 any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done if it is within the power of the relevant person to prevent that thing being done;
 - 1.3.2 references to the masculine gender include the feminine and vice versa and any such reference shall also include the neuter. Similarly references to the singular include the plural and vice versa;
 - 1.3.3 the rule known as the ejusdem generis rule shall not apply to this Agreement and accordingly general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
 - 1.3.4 general words in this Agreement shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
 - 1.3.5 references to persons shall include bodies corporate, unincorporated associations and partnerships.
- 1.4 Headings are for convenience only and shall not affect the construction of this Agreement.

2 The Donation

- 2.1 The Donors agree to transfer, or procure the transfer, with full title guarantee, and the Museums' Boards agree to acquire, the Art free from all claims, liens, charges, encumbrances and equities (save for any Retained Rights). The Donors have, and will at Completion have, the right to transfer legal and beneficial title to the Art (save for any Retained Rights).
- 2.2 Risk in the Art shall pass to the Museums' Boards immediately upon signature of this Agreement and if any work of art comprised in the Art is lost or destroyed or stolen before Completion it shall nevertheless be deemed to be delivered on Completion and therefore there shall be no abatement in the Consideration.

3 Consideration

- 3.1 The total consideration (the "**Consideration**") for the Art shall be the aggregate of:-

(a)

(b)

(c)

(d)

[REDACTED]

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- [REDACTED]
- 3.2 The Consideration is expressed exclusive of VAT which will be payable in addition.
- 3.3 In addition to the Consideration the Museums' Boards hereby agree to indemnify and keep indemnified ADL from and against any liability to pay any resale royalty (within the meaning of Regulation 3 of The Artist's Resale Right Regulations 2006) on or in respect of the transfer of ownership of all or any of the works of art comprised in the Art so that the Museums' Boards will pay and discharge any such liability to the relevant collecting society on behalf of ADL and shall indemnify and keep indemnified ADL against any liability which ADL suffers or incurs as a result of any failure by the Museums' Boards duly and punctually to discharge such liability Provided that the maximum aggregate liability of the Museums' Boards under this Clause 3.3 shall be [REDACTED] \$43(2)

4 Conditions

- 4.1 The obligations of the parties to complete this Agreement are subject to satisfaction of the following conditions (the "**Conditions**"):
- 4.1.1 the receipt by the Museums' Boards of confirmation (in terms satisfactory to the Museums' Boards (acting reasonably)) from H M Revenue & Customs that the Museums' Boards will be able to obtain a full refund of the VAT payable in respect of the transfer of the Art and that payments under this Agreement should not be treated as triggering non-charitable expenditure;
- 4.1.2 the receipt by the Museums' Boards of sufficient funding to satisfy the Consideration and the VAT thereon (including any increase arising by virtue of the operation of Clause 5.5);
- 4.1.3 the approval of each of the Museums' Boards to the entering into of this Agreement and the acquisition of the Art on the terms of this Agreement given at duly convened and validly constituted meetings of the NGS Board and the Tate Board; and
- 4.1.4 the Museums' Boards being satisfied with the condition of each of the works of art comprised in the Art.
- 4.2 The parties shall use their respective reasonable endeavours to procure that each of the Conditions is fulfilled as soon as possible and in any event on or before 7th March 2008 in the case of the Conditions referred to in Clauses 4.1.1, 4.1.3 and 4.1.4 and on or before 27th June 2008 in the case of the Condition referred to in Clause 4.1.2 but if the Conditions have not been satisfied (or, in the case of the Condition specified at Clause 4.1.4, waived by the Museums' Trustees) by the relevant dates (or by such later date or dates as may be agreed in writing by all of the parties hereto), then this Agreement shall automatically terminate and be of no further effect save for the provisions of Clauses 1, 5.1, 12, 14, 18, 19, 22 and 23 which shall continue to apply and save for any accrued rights.

5 Escrow and Completion

- 5.1 Immediately upon execution of this Agreement the parties shall enter into the Escrow Account Letter. On 10th March 2008, the Museums' Boards shall deposit

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the sum of [REDACTED] (the "Escrow Sum") into the Escrow Account, such deposit to be made by telegraphic same day transfer. The Escrow Sum shall be held in the Escrow Account and released therefrom so as to be applied towards satisfaction of the Consideration at Completion in accordance with Clause 5.3 and any interest accrued thereon shall be transferred to the account of ADL (such interest not forming part of the Consideration) Provided that if Completion does not take place on or before 7th July 2008 the whole amount standing to the credit of the Escrow Account (being the Escrow Sum and all interest accrued on the monies held in the Escrow Account (the "Escrow Interest") shall be transferred as to 50 per cent to the Tate Board and as to 50 per cent to the NGS Board, such transfers being effected by telegraphic same day transfers to such accounts as the Tate Board and the NGS Board shall respectively direct to the Escrow Agent.

5.2 Completion shall take place at the offices of [REDACTED]

the date on which (i) the Donors or either of them shall notify in writing the Museums' Boards that they are satisfied that all of the Conditions have been satisfied (or, where permitted, waived) so far as concerns the Donors and (ii) the Museums' Boards or either of them shall notify in writing the Donors that they are satisfied all of the conditions have been satisfied (or, where permitted, waived), so far as concerns the Museums' Trustees.

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5.3 At Completion:

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5.3.1 [REDACTED]

5.3.2 To the extent not already in the possession of one or other of the Museums, the Donors shall make available for collection in the United Kingdom by the relevant Museum each of the works of art comprised in the Art whereupon the same shall be deemed to have been delivered.

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5.3.3 [REDACTED]

5.3.4 In settlement of the Consideration and the VAT thereon, the Museums' Boards shall make, or procure the making of, the following payments in cash by telegraphic transfer as follows:

(a) [REDACTED]

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(b)

[REDACTED]

(c)

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(d)

(e)

(f)

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5.3.5

5.3.6 If the Museums' Boards shall fail to comply in full with their obligations under Clauses 5.3.4 and 5.3.5, the Donors may either:-

5.3.6.1 by notice in writing to the Museums' Boards, defer Completion to a date not more than 5 Business Days after the date on which Completion was due to take place (so that the provisions of Clause 5.3 (other than the right to defer Completion under this Clause 5.3.6) shall apply to Completion as so deferred); or

5.3.6.2 terminate this Agreement by notice in writing to the Museums' Boards.

5.3.7 If this Agreement is terminated in accordance with Clause 5.3.6 then the provisions of Clauses 1, 5.1, 12, 14, 18, 19, 22 and 23 shall continue to apply but subject thereto no party shall have any further right or obligation under the terms of this Agreement notwithstanding the default of the Museums' Boards which shall have given rise to such termination.

5.4

5.5 The parties recognise that the Consideration has been calculated on the basis of income tax, corporation tax and VAT payable in accordance with the laws and HM Revenue & Customs practice in force at the date hereof.

6 The Collection

6.1 Following Completion, the Art and all other Works shall be owned by the Museums' Boards (on behalf of the Museums) jointly in equal undivided shares.

6.2 The Art together with any other Works shall be catalogued, displayed and identified as part of the Collection.

6.3



6.4 The Art shall be referred to in perpetuity as "The d'Offay Donation" and the works of art comprised in the Art shall be labelled, and all publications, reproductions and communications of any kind, written or oral, referring to the Art or the works of art comprised therein shall clearly make one of the following statements (as appropriate):

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6.4.1 When used at Tate:

"ARTIST ROOMS

Acquired jointly with the National Galleries of Scotland through The d'Offay Donation with assistance from the National Heritage Memorial Fund 2008 and The Art Fund";

6.4.2 When used at the National Galleries of Scotland:

"ARTIST ROOMS

Acquired jointly with Tate through The d'Offay Donation with assistance from the National Heritage Memorial Fund 2008 and The Art Fund"; and

6.4.3 When used at third parties:

"ARTIST ROOMS

Tate and the National Galleries of Scotland. Acquired jointly through The d'Offay Donation with assistance from the National Heritage Memorial Fund 2008 and The Art Fund".

The Collection shall be known as "ARTIST ROOMS". The Collection shall be identified in the Museums' catalogues so as to maintain its distinctive identity.

6.5 Each of the Museums' Boards severally undertakes to procure that:-

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6.5.1



6.5.2



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- 6.6 The Collection shall generally be devoted to the work of single artists exhibited as "rooms" so that such work can be displayed in some depth, except that it is agreed that individual works may be loaned or shown with the agreement of the Management Committee. The Museums' Boards agree that one of their primary goals in accepting the Art will be to exhibit the Collection, in whole or in part, as widely as possible across the United Kingdom and not just in London and Edinburgh, especially with a view to benefiting students and young people. From time to time Works will be loaned to other institutions for the purposes of exhibiting the same. Whilst it is recognised that ultimate responsibility for the presentation and display of such works will rest with such institutions, the Museums' Boards will seek to ensure that, so far as possible, the terms of any such loan impose on such institutions obligations consistent with those of the Museums' Boards and the Management Committee under this Agreement so far as concerns the exhibiting of such works of art.

- 6.7 The Works will be displayed in accordance with the Museums' respective policies for other works in their permanent collections. When displayed they shall be displayed in such a way that they may be viewed by members of the public during the opening hours of the Museum or other institution where they are from time to time displayed, without payment of any fee or charge by any such members of the public. It shall be a condition of the terms upon which individual Works are loaned to or otherwise allowed to be shown by other institutions, that such Works may be viewed free of charge on the same basis Provided that it is agreed that any Work or Works which forms part of a temporary exhibition may be subject to a charge to the public if required under the agreed conditions of such exhibition.

- 6.8 It is understood that the Donors or either of them or the Museum's Boards or either of the Museums Boards may purchase works from the same artists, collectors or institutions from time to time and that the Donors or either of them may be pursuing a work without the knowledge of the Museums' Boards or either of the Museums Boards (and vice versa). When one or both of the Donors or one or both of the Museums' Boards becomes aware (the party which is aware being the "**First Party**") that the other (the "**Other Party**") is interested in acquiring the work, collection or artist's activities with respect to a work which the First Party is interested in acquiring, the First Party shall tell the Other Party of its

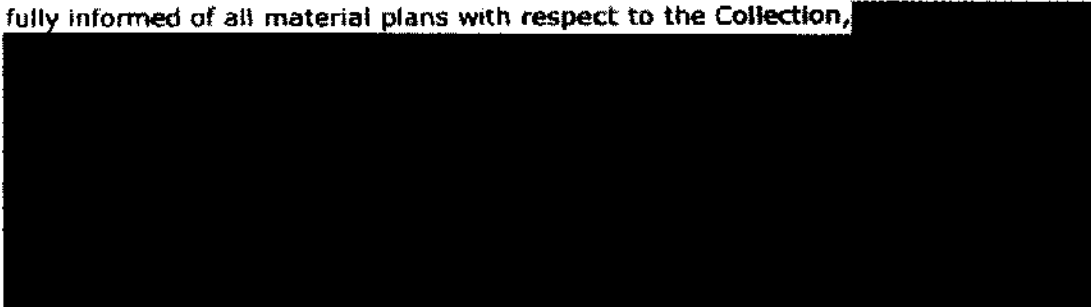
interest and the stage it is at in the process of acquiring the same. The Museums' Boards shall have a right of first refusal to acquire such work or collection or artist's activities with respect to a work for the purposes of adding it to the national collection provided that they are in a position to complete the negotiations for the purchase of such work or collection or artist's activities with respect to a work and pay for the same within a reasonable period.

- 6.9 For so long as Mr d'Offay is EOC, save with the prior written consent of the relevant Museum Board, no Donor shall buy any work of contemporary art from nor (save for the Art) sell any work of contemporary art to either of the Museums' Boards (and vice versa) nor shall any Donor solicit or accept a commission or remuneration of any kind with respect to any work of contemporary art bought, sold or loaned by either of the Museums' Boards for the purposes of inclusion into the Collection (and vice versa) Provided that nothing in this Clause 6.9 shall prevent either of the Donors from loaning works to the Museums or either of them on the customary terms under which such loans are made to museums in Britain, including but not limited to transportation, insurance, advertisement and acknowledgements.

7 Management of the Collection

- 7.1 The Museums' Boards are to be responsible for the stewardship of the Collection. The Museums' Boards will establish a joint management committee (the "**Management Committee**") which will be responsible to the Museums' Boards for the management of the Collection. The Management Committee will be responsible for the overall direction and oversight of the Collection, the choice of venues for exhibition, arrangements with participating museums for loans from the Collection and the general administration of the Collection consistent with the basis upon which the Donation is made.

- 7.2 The Museums' Boards shall ensure that Mr d'Offay, in his capacity as EOC, is kept fully informed of all material plans with respect to the Collection,



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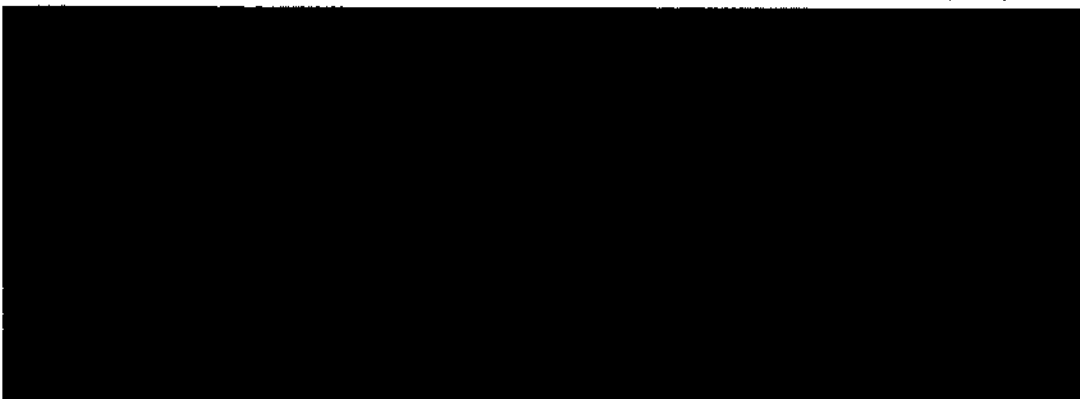
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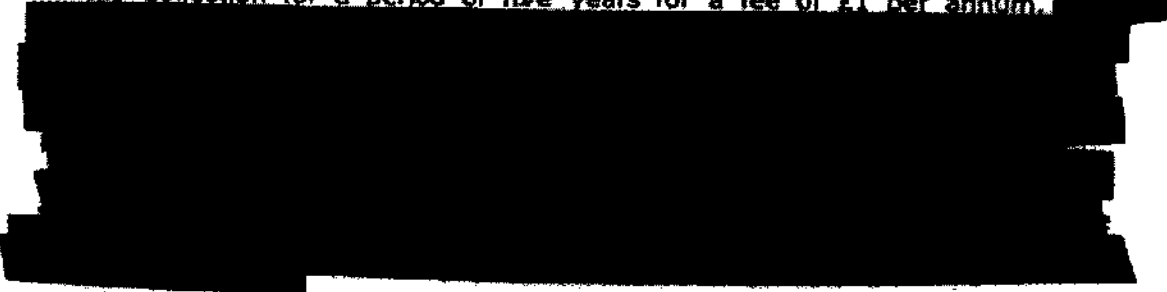
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7.5

8 Ex-Officio Curator

8.1 With effect from Completion Mr d'Offay shall become Ex-Officio Curator ("EOC") to the Collection for a period of five years for a fee of £1 per annum.



8.2



1. [Redacted]

2. [Redacted]

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8.3 In relation to the hanging, framing, publication, display, quantity, conservation and other matters related to exhibiting works of art comprised in the Collection, the Management Committee shall ensure that the works of art produced by an artist are shown in specific concentrations so as to be displayed in some depth in rooms or a number of rooms devoted to the works of that artist Provided that individual Works may be included in group exhibitions or used to augment existing displays in museums and galleries nationwide and internationally. However in all circumstances the display of the Works in Artist Rooms is to take precedence over any individual or group loans. The Management Committee shall comply with the Guidelines so far as practicable and shall consider any advice provided by Mr d'Offay for so long as he remains EOC and, so far as practicable, shall follow such advice unless the Management Committee is able to demonstrate it is acting reasonably in not doing so. However ultimately any decision relating to such matters shall rest with the Management Committee.

8.4 Mr d'Offay shall seek to agree the Guidelines for all the Works, with the Head of International Collections at the Tate and the Chief Curator at the Scottish National

Gallery of Modern Art as soon as practicable after Completion. The parties agree that such Guidelines shall be in the style of those agreed for the photographs by Diane Arbus included in the works of art comprised in the Art, so far as applicable to the other Works.

9 Effect of Completion

Any provision of this Agreement and any other documents referred to in it which is capable of being performed after but which has not been performed at or before Completion and all warranties, covenants, indemnities and other undertakings contained in or entered into pursuant to this Agreement shall remain in full force and effect notwithstanding Completion.

10 Expiry of this Agreement

The terms of this Agreement which survive Completion shall expire on the thirtieth anniversary of the date of Completion save for the terms of Clause 6.4. The perpetuity period for the purposes of this Agreement shall be 80 years from the date hereof.

11 Assignment

Neither the benefits of this Agreement nor the obligations under this Agreement shall be assignable by any party save in the context of a solvent reorganisation, merger or reconstruction.

12 Remedies and Waivers

12.1 No delay or omission by any party to this Agreement in exercising any right, power or remedy provided by law or under this Agreement or any other documents referred to in it shall:

12.1.1 affect that right, power or remedy; or

12.1.2 operate as a waiver thereof.

12.2 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.

12.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

13 Further Assurance

Each of the Donors shall from time to time at the Museums' cost, on being required to do so by the Museums' Boards, do or procure the doing of all such acts and/or execute or procure the execution of all such deeds and documents as the Museums' Boards may reasonably require for perfecting the transfer of the Art.

14 Entire Agreement

14.1 This Agreement supersedes the letter of intent signed by or on behalf of the parties on 24th and 25th September 2007 and constitutes the whole agreement between the parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law which may be excluded by

contract. Each party acknowledges that it has not been induced to enter into this Agreement by, and so far as is permitted by law and except in the case of fraud, hereby waives any remedy in respect of, any warranties, representations and undertakings not incorporated into this Agreement.

14.2 Each party to the Agreement confirms it has received independent legal advice relating to the matters provided for in this Agreement, including the provisions of this Clause and agrees, having considered the terms of this Clause and the Agreement as a whole, that the provisions of this Clause are fair and reasonable.

14.3 In Clauses 14.1 and 14.2 "this Agreement" includes all documents entered into or to be entered into pursuant to this Agreement.

14.4 No future variation shall be effective unless made in writing and signed by each of the parties.

15 Joint and Several Liability

15.1 The obligations of the Donors under this Agreement are joint and several and, save for the purposes of Clause 6.5, the obligations of the Museums' Boards under this Agreement are joint and several.

15.2 If any liability of one but not both of the Donors is or becomes illegal, invalid or unenforceable in any respect, that shall not affect or impair the liabilities of the other Donor under this Agreement. If any liability of one but not both of the Museums' Boards is or becomes illegal, invalid or unenforceable in any respect, that shall not affect or impair the liabilities of the other Museum Board under this Agreement.

15.3 Nothing in this Agreement shall constitute or be deemed to constitute, a partnership between all or any of the parties, nor shall it constitute, or be deemed to constitute any party the agent of any other for any purpose and no party shall have any authority, or be deemed to have any authority to represent, commit or bind any other party in any respect whatsoever.

16 Release of Parties

The Donors may release, or compromise the liability of, any Museum Trustee or grant time or other indulgence to any Museum Board without releasing or reducing the liability of the other Museum Board. Where a liability of one but not both of the Museums' Boards under any obligation which is both joint and several is released or compromised, the remaining Museum Board shall continue to be severally liable on that obligation. The Museums' Boards may release, or compromise the liability of, any Donor or grant time or other indulgence to any Donor without releasing or reducing the liability of the other Donor. Where a liability of one but not both of the Donors under any obligation which is both joint and several is released or compromised, the remaining Donor shall continue to be severally liable on that obligation.

17 Notices

17.1 Except where expressly stated otherwise a notice under this Agreement shall only be effective if it is in writing.

17.2 Notices under this Agreement shall be sent to a party at its address or facsimile number and for the attention of the individual set out below:

Party	Address	Facsimile No.
Mr d'Offay	[REDACTED]	[REDACTED]
	<i>with copy to:</i>	[REDACTED]
	[REDACTED]	[REDACTED]
ADL	9 Dering Street London W1S 1AG	[REDACTED]
	<i>with copy to:</i>	[REDACTED]
	[REDACTED]	[REDACTED]
NGS Board	The Director-General National Galleries of Scotland The Dean Gallery Edinburgh EH4 3DS	0131-220 2753
Tate Board	The Director The Tate Gallery Millbank London SW1P 4RG <i>with copy to:</i>	020 7887 8020
	The Chief Operating Officer	

Provided that a party may change its notice details on giving notice to the other parties of the change in accordance with this Clause. That notice shall only be effective on the day falling five clear Business Days after the notification has been received or such later date as may be specified in the notice.

- 17.3 Any notice given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:-
- 17.3.1 if delivered personally, on delivery;
 - 17.3.2 if sent by first class post, two clear Business Days after the date of posting;
 - 17.3.3 if sent by facsimile, when despatched.
- 17.4 Any notice given under this Agreement outside the hours of 9.30 am to 5.30 pm on a working day in the place to which it is addressed shall be deemed not to have been given until 9.30am on the next working day in such place.

18 Announcements

- 18.1 No announcement concerning this Agreement, the Donation, the transfer of the Art or any of the matters the subject of this Agreement shall be made by any party hereto without the prior written approval of the other parties. This sub-clause does not apply in the circumstances described in Clause 18.2.
- 18.2 Any party may, after consultation with the other parties, make an announcement concerning this Agreement, the Donation, the transfer of the Art or any of the matters the subject of this Agreement if required by any law or regulation having legal effect.
- 18.3 The restrictions contained in this Clause shall apply without limit in time.

19 Confidentiality

- 19.1 Each party shall treat as confidential all Designated Information obtained as a result of entering into or performing this Agreement which relates to:-
- 19.1.1 the provisions of this Agreement;
 - 19.1.2 the negotiations relating to this Agreement;
 - 19.1.3 the subject matter of this Agreement; or
 - 19.1.4 any other party.
- 19.2 Notwithstanding the other provisions of this Clause, any party may disclose confidential information:-
- 19.2.1 if and to the extent required by any law or regulation having legal effect or for the purpose of any judicial proceedings;
 - 19.2.2 if and to the extent required to vest the full benefit of this Agreement in that party;
 - 19.2.3 to its professional advisers, auditors and bankers;
 - 19.2.4 if and to the extent the information has come into the public domain through no fault of that party; or
 - 19.2.5 if and to the extent the other parties have given prior written consent to the disclosure, such consent not to be unreasonably withheld or delayed.
- Any information to be disclosed pursuant to sub-clauses 19.2.1, shall be disclosed only after consultation with the other party.
- 19.3 The restrictions contained in this Clause shall apply without limit in time.
- 19.4 In this clause, "**Designated Information**" means information (in whatever form) relating to the Consideration, the Conditions, the Collection and the Management Committee which is confidential and/or if the Freedom of Information Act 2000 ("**FoI Act**") is applicable, which Mr D'Offay or ADL designates that he or it wish to be treated as exempt from disclosure under the FoI Act.
- 19.5 Mr d'Offay and ADL each recognise that if the Act is applicable to this Agreement, the Tate and/or NGS may be required to release information. If the Tate and/or

NGS receives a request for information under the FoI Act, and requires assistance in obtaining such information, Mr d'Offay and ADL agree to use all reasonable endeavours to provide such assistance.

20 Counterparts

- 20.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- 20.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

21 Third Parties

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Act**") to enforce any term of this Agreement, but this shall not affect any right or remedy of a third party which exists or is otherwise available apart from the Act.

22 Costs and Expenses

All reasonable costs and expenses in relation to the negotiations leading up to the Donation and the transfer of the Art and to the preparation, execution and carrying into effect of this Agreement and of all other documents referred to in it including all legal fees and the fees of other professional advisers and all costs of transporting the works of art comprised in the Art to the Recipient shall be borne by the Museums' Boards.

23 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with English law. The parties agree that the Courts of England and Wales are to have jurisdiction to settle any dispute arising out of or in connection with this Agreement. Any proceeding, suit or action arising out of, or in connection with this Agreement may therefore be brought in the English courts. Nothing contained in this Clause shall limit the right of any party to take Proceedings against any other party in any other court or in the courts of more than one jurisdiction at the same time.

IN WITNESS whereof this Agreement has been executed as a Deed the day and year first before written.