

1 Definitions

AGWA means the Art Gallery of Western Australia ABN 14 734 347 675.

Artist means the creator of the portrait.

ARTrinsic means ARTrinsic Inc ABN 76 562 139 103.

Australian Resident means a person who:

- a) is an *Australian Citizen*, as that term is defined in the *Australian Citizenship Act 2007 (Cth)*; or
- b) resides in Australia and holds a current *Permanent Visa*, as that term is defined in the *Migration Act 1958 (Cth)*.

Black Swan Prize for Portraiture means the Prize and all past or future portraiture prizes created and organised by ARTrinsic entitled 'Black Swan Prize for Portraiture'.

Brookfield means Brookfield Commercial Operations Pty Ltd ABN 86 120 690 940.

Business Days means any day other than a Saturday, Sunday or public holiday in Western Australia.

Closing Date means 5:00pm (AWST) on 27 July 2018.

Consent Form means the form providing written:

- a) consent from the parent or guardian of the Artist for the Artist's portrait to be entered into the Prize; and
- b) agreement on behalf of the Artist from the parent or guardian of the Artist, to these terms and conditions.

Entry Fee is \$15.00 (inclusive of GST) per portrait.

Entry Form means the 2018 Youth Black Swan Prize for Portraiture Entry Form available on the Website and submitted to ARTrinsic online via the Website.

Exhibition Requirements has the meaning given in "Section Two – Finalists Only", Exhibition Requirements.

Final Judging has the meaning given in "Section Two – Finalists Only", Final Judging & Announcement of Winners.

Finalist has the meaning given to that term in clause 15.

Judges has the meaning given in "Section Two – Finalists Only", Final Judging & Announcement of Winners.

Justification has the meaning given to that term in clause 9.

Main Exhibition has the meaning given in “Section Two – Finalists Only”, Exhibition of Portrait.

Portrait Description has the meaning given to that term in clause 14.

Pre-selection Panel has the meaning given to that term in clause 15.

Prize means the 2018 Youth Black Swan Prize for Portraiture.

Squire Patton Boggs (AU) School Prizes means the awards detailed and described in clause 8.

Student Prizes means the awards detailed and described in clause 7.

Subject has the meaning given to that term in clause 9.

Subsequent Exhibitions has the meaning given in “Section Two – Finalists Only”, Exhibition of Portrait.

Website means www.blackswanprize.com.au

2 General

These terms and conditions, the Artist’s completed Entry Form and Consent Form, form the agreement between the Artist, the Artist’s parent or guardian and ARTrinsic which governs the entry of a portrait into the Prize.

By submitting a completed Entry Form to ARTrinsic and, in the case of an Artist under the age of 18 years, the Consent Form, the Artist is taken to agree to these terms and conditions.

ARTrinsic may amend these terms and conditions and the Entry Form at any time, subject to giving notice of the amendment to the Artist. Notice of any amendment may be written, verbal or constructive notice. The Artist’s continued involvement in the Prize after any amendment will be taken as their acceptance of any changes to these terms and conditions and the Entry Form.

ARTrinsic has absolute discretion in deciding whether or not an Artist or a portrait has satisfied the terms and conditions for entry into the Prize.

3 Artists

As at 1 January 2018, the Artist must be:

- (a) an Australian school or home-schooled student in years 7 to 12 of school; and
- (b) an Australian Resident.

In the case of home-schooled students, year levels relate to the relative age of the student, such that a home-schooled student will be deemed to be in the year level that they would otherwise be in if they were attending regular schooling, according to age.

Employees of ARTrinsic, AGWA staff, Prize sponsors and employees or immediate families of the Prize Judges and their respective agents cannot enter the Prize.

All Artists under the age of 18 years must obtain their parent or guardian's consent to enter the Prize. This will be evidenced by a parent or guardian of the Artist signing the Consent Form.

4 Entering the Prize

To enter a portrait in the Prize, the Artist or their agent must:

- (a) submit a completed Entry Form and Consent Form to ARTrinsic by the Closing Date; and
- (b) pay the Entry Fee to ARTrinsic:
 - i) within 10 Business Days of the date of submission of the completed Entry Form to ARTrinsic; or
 - ii) by the Closing Date, whichever date is earlier.

An Entry Form will be deemed a 'completed Entry Form' only if:

- (a) all data fields on the Entry Form are correctly completed; and
- (b) it attaches the Portrait Images in the correct format (jpeg/jpg).

The Consent Form must be submitted to ARTrinsic by post to ARTrinsic Inc., PO Box 498 Inglewood WA 6932. The Consent Form must be postmarked on or before the Closing Date.

Incomplete entries and the portraits associated with incomplete entries will not be processed, accepted or considered by the Pre-Selection Panel for exhibition.

5 Entry Fee

The Entry Fee must be paid to ARTrinsic by:

- (a) cheque; or
- (b) money order.

The Entry Fee will be deemed 'paid' to ARTrinsic upon receipt of cleared funds by ARTrinsic.

The cheque or money order must be made payable to "ARTrinsic Inc" and posted to The Treasurer, ARTrinsic Inc, PO Box 498 Inglewood WA 6932.

The Entry Fee is non-refundable.

6 Warranties

The Artist and their parent or guardian agree and warrant that:

- (a) all information provided by the Artist, their parent, guardian or agent in the completed Entry Form, Consent Form and to ARTrinsic in the course of the Prize is true and correct;
- (b) the Artist is an Australian Resident;
- (c) the Artist is an Australian school or home-schooled student in years 7 to 12 of school;
- (d) the Artist's portrait is a portraiture artwork undertaken and completed by the Artist within the 18 months immediately preceding the Closing Date;
- (e) the Portrait Images are true and accurate representations of the Artist's portrait; and
- (f) if the Artist is selected as a Finalist:
 - i) the Artist's portrait will be available from 1 October 2018 to 24 November 2018 inclusive, for exhibition; and
 - ii) the Artist or their agent will deliver the portrait on time to such locations as advised by ARTrinsic from time to time, and the portrait will not be permitted to be collected before 24 November 2018.

7 Student Prizes

By entering the Prize, the Artist agrees that all Finalists are eligible to be considered for the award of the following:

- (a) if the Artist is in Years 11 or 12 of school:
 - (i) 1st Prize - \$500 gift voucher from H.U. Kendall & Co;
 - (ii) 2nd Prize - \$100 worth of Art Supplies by H.U. Kendall & Co; or
 - (iii) 3rd Prize - \$50 worth of Art Supplies by H.U. Kendall & Co.
- (b) if the Artist is in Years 9 or 10 of school:
 - (i) 1st Prize - \$500 gift voucher from H.U. Kendall & Co;
 - (ii) Years 9-10: 2nd Prize - \$100 worth of Art Supplies by H.U. Kendall & Co; or
 - (iii) 3rd Prize - \$50 worth of Art Supplies by H.U. Kendall & Co.
- (c) if the Artist is in Years 7 or 8 of school:
 - (i) 1st Prize - \$500 gift voucher from H.U. Kendall & Co;
 - (ii) 2nd Prize - \$100 worth of Art Supplies by H.U. Kendall & Co; or
 - (iii) 3rd Prize - \$50 worth of Art Supplies by H.U. Kendall & Co.

The Artist also acknowledges and agrees that not all Artists receive a Student Prize.

8 Squire Patton Boggs (AU) School Prizes

A school will be eligible to be considered for award of the following if one or more of its students is a Finalist:

- (a) if the Finalist is in years 10 to 12
One day professional Art Workshop hosted by a finalist in the 2018 Adult Black Swan Prize for Portraiture, valued at \$1,000. Details to be worked out in conjunction with ARTrinsic and the winning school. Prize is valid for one year only.
- (b) if the Finalist is in years 7 to 9
Half day professional Art Workshop hosted by a finalist in the 2018 Black Swan Prize for Portraiture, valued at \$500. Details to be worked out in conjunction with ARTrinsic and the winning school. Prize is valid for one year only.

9 Subject

The portrait must be a portrait of:

- (a) a well-known Australian Resident or more than one well-known Australian Resident;
 - (b) an Australian Resident that the Artist admires or is inspired by; or
 - (c) a self-portrait,
- (the "Subject").

If the Subject is an Australian Resident that the Artist admires or is inspired by, then in the Entry Form the Artist must justify why the Subject has inspired the Artist or is someone the Artist admires ("Justification").

ARTrinsic or their representative (which may be the Pre-selection Panel and/or Prize Judges) have sole discretion to determine whether the Justification is sufficient to allow the portrait to be eligible to be considered by the Pre-Selection Panel for exhibition. ARTrinsic or their representative may make this decision with or without (at ARTrinsic's sole discretion) further information from the Artist. Should ARTrinsic or their representative determine the Justification is insufficient, the portrait will not be eligible to be considered by the Pre-Selection Panel for exhibition.

While the human form must be the focus of the portrait, Artists are invited to interpret the concept of portraiture broadly.

10 Portrait Completion Date

The portrait must have been undertaken and completed by the Artist in the 18 months immediately preceding the Closing Date.

11 Medium

Portraits may be executed in (but not restricted to) oil, acrylic, watercolour, pastels, textiles, pencils, charcoal, ink and mixed media (no sculptures, digital media or photography accepted). The Artist must provide details of the media used in the portrait on the Entry Form. If there is any uncertainty as to the media used contact ARTrinsic.

12 Size Requirements

The size of the portrait must not exceed A0 in size (excluding the frame) with a maximum weight of 30kg. Diptych's and Triptych's must not exceed A0 in size. A0 is 841mm x 1,189mm.

13 Number of Entries

Artists may enter a maximum of two portraits in the Prize.

Artists agree that if they enter more than one portrait, only one portrait can be selected for exhibition in accordance with clause 15.

Separate Entry Forms need to be completed and submitted to ARTrinsic for each portrait.

14 Portrait Description

The Artist must provide a brief description of their experience of painting their Subject (600 characters max) with the Entry Form (“Portrait Description”).

The Artist and their parent or guardian agree to ARTrinsic, Brookfield and AGWA using the Portrait Description for the purposes of:

- (a) any display or exhibit of the portrait;
- (b) promoting, marketing, advertising or otherwise publicising any aspect of the Black Swan Prize for Portraiture, or any display or art exhibitions containing portraits entered into the Black Swan Prize for Portraiture;
- (c) production of electronic and print media, such as but not limited to, exhibition catalogues featuring images of portraits entered in the Black Swan Prize for Portraiture, the Portrait Images and or the Portrait Description; and
- (d) education.

The Portrait Description must be accurate with no spelling or grammatical errors. The Artist agrees that ARTrinsic has the right to amend the Portrait Description or its placement in any display or exhibition of the portrait.

15 Pre-Selection Process

A pre-selection panel (“Pre-selection Panel”) will review the Portrait Images and select approximately 30 to 40 portraits for exhibition.

An Artist whose portrait is selected by the Pre-selection Panel for exhibition at the Main Exhibition is a finalist (“Finalist”).

ARTrinsic reserves the right to revoke an Artist’s status as a Finalist if the portrait differs in any material way from the Portrait Images.

The Pre-selection Panel will consist of 3 members who will be selected at ARTrinsic’s sole discretion. Members of the Pre-selection Panel may also be selected as Judges of the Finalists’ portraits. The Pre-selection Panel’s decisions are final and no correspondence will be entered into.

16 Finalists subject to “Section Two – Finalists Only”

The Artist acknowledges and agrees that the terms and conditions set out in clause 19(3), clause 20, and “Section Two - Finalists Only” will apply if the Artist is a Finalist.

17 Notification of Finalists

The Finalists will be announced to the media and published on the Website on Friday 17 August 2018. Finalists will not be notified before the media announcement and publication on the Website.

As Artists are not informed of their status as a Finalist prior to 17 August 2018, each Artist acknowledges and agrees that any marketing material or media announcements produced or published on and prior to 17 August 2018 may not include the following details:

- (a) the name and details of the photographer whose image(s) of the Artist or Artist's portrait appear in the marketing material or media announcements; and
- (b) image courtesy credit where the image is supplied by a commercial agent or representative or in agreement between the Artist and the agent or representative.

All Artists will be contacted via email after the media announcement and publication on the Website, with the notification of the Finalists. It is the Artist's responsibility to ensure they notify ARTrinsic of any changes to their contact details.

18 Ownership and Risk

The Artist shall be and will remain the owner of the physical portrait upon entry into the Prize.

Whilst all reasonable care will be taken:

- (a) ARTrinsic;
- (b) ARTrinsic's:
 - i) contractors;
 - ii) staff; and
 - iii) volunteers;
- (c) Brookfield; and
- (d) Brookfield's:
 - i) contractors;
 - ii) staff; and
 - iii) volunteers,

will not be liable or held responsible for any loss or damage whatsoever or however caused, to any portrait:

- (a) while in their custody; or
- (b) during transport to or from any exhibition in which the portrait is displayed.

19 Intellectual Property

- (1) Subject to clause 19(3), the Artist retains intellectual property in any portrait entered in the Prize and nothing in these terms and conditions shall transfer, alter or assign their intellectual property.
- (2) All Artists acknowledge, agree and warrant that if they submit images (including Portrait Images) to ARTrinsic taken by a third party, the Artist is authorised to do so for the purposes disclosed in these terms and conditions and the third party author is aware of and agrees to:
 - (a) ARTrinsic, Brookfield and or AGWA using those images in any way in relation to the Black Swan Prize for Portraiture, including but not limited to the reproduction, publication or communication of those images in any way and in any form of media such as print or digital; and
 - (b) their name and details not appearing in relation to those images in some circumstances.
- (3) If an Artist becomes a Finalist, in consideration for the public display or exhibition of their portrait by ARTrinsic, the Artist hereby:
 - (a) grants to:
 - (i) ARTrinsic a perpetual, non-exclusive, royalty-free, worldwide licence (including the right to sub-licence); and
 - (ii) Brookfield a 1 year, non-exclusive, royalty-free, worldwide licence;
 - (iii) AGWA, and each of ARTrinsic's touring partners and sponsors, a 1 year, non-exclusive, royalty-free, worldwide licence; and
 - (iv) AGWA a 3 year, non-exclusive, royalty-free, worldwide licence to archive the Exhibition page on the AGWA website (www.artgallery.wa.gov.au), to photograph, publish, copy, reproduce, communicate to the public (including via the internet and social media platforms) and otherwise exercise the intellectual property rights in their portrait selected for exhibition, the associated Portrait Images and the Portrait Description for the purposes of:
 - A. displaying or exhibiting in any way, including in a print or digital form, the portrait, images of the portrait, the Portrait Images and or the Portrait Description;
 - B. determining the winners of the Prize Awards;
 - C. promoting, marketing, advertising or otherwise publicising any aspect of the Black Swan Prize for Portraiture or any displays or art exhibitions containing portraits entered into the Black Swan Prize for Portraiture;
 - D. publications on the Website, AGWA website (www.artgallery.wa.gov.au) or social media;
 - E. production of electronic and print media, such as but not limited to, exhibition catalogues featuring the portrait, images of portraits entered in the Black Swan Prize for Portraiture, the Portrait Images and or the Portrait Description;
 - F. education; and
 - G. any other uses as may be required by ARTrinsic to comply with its obligations under these terms and conditions;

- (b) acknowledges and agrees that in the event their portrait is displayed in any displays or exhibitions containing portraits entered into the Black Swan Prize for Portraiture:
 - (i) the portrait may be photographed by visitors to the display or exhibition;
 - (ii) the portrait may be photographed by media and used in media and public communications; and
 - (iii) third party websites may promote the display or exhibition of portraits entered into the Black Swan Prize for Portraiture; and

- (c) agrees to indemnify and hold harmless ARTrinsic, Brookfield, AGWA and each of ARTrinsic's, Brookfield's and AGWA's agents and employees against any claim by a third party that the third party's intellectual property rights have been infringed:
 - (i) by the Finalist;
 - (ii) by ARTrinsic, Brookfield, AGWA and or each of ARTrinsic's, Brookfield's and AGWA's agents and employees;
 - (iii) by the Finalist's portrait or any use thereof,
 - (iv) by the Portrait Images or any use thereof;
 - (v) by the Portrait Description or any use thereof; or
 - (vi) as a consequence of use of any information, images or materials provided by the Finalists to ARTrinsic, Brookfield, AGWA and each of ARTrinsic's, Brookfield's and AGWA's agents and employees.

20 Moral Rights

While ARTrinsic, Brookfield and AGWA endeavour not to breach the Artist's moral rights (as provided in the *Copyright Act 1968* (Cth)), the Artist hereby acknowledges that in some instances it may not be possible for ARTrinsic, Brookfield or AGWA to include the name of the Artist in connection with their portrait on social media platforms.

The Artist hereby consents to ARTrinsic, Brookfield and AGWA not including the Artist's name in relation to the Artist's portrait where the portrait is displayed or reproduced, in any format, on social media platforms or in any media or press releases issued prior to notification of Finalists on 17 August 2018.

21 Governing Law

The law applicable to these terms and conditions is that of the State of Western Australia and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.



These terms and conditions apply to Finalists.

Delivery

The Finalist or their agent:

- (a) is responsible for delivering their un-framed portrait to Arts Edge Photo & Frame (Shop 75, Joondalup Gate, 93 Joondalup Drive, Edgewater WA 6027) (“Arts Edge”) in the period:
 - (i) Tuesday 28 August 2018 to Thursday 30 August 2018; or
 - (ii) Tuesday 4 September 2018 to Thursday 6 September 2018, between the hours of 9:00am and 5:00pm (AWST) only; and
- (b) must ensure the portrait is covered in bubble wrap or in a suitable case for protection during transport.

Portraits received outside or after the dates and times referred to above will not be accepted under any circumstances and no exceptions will be made.

ARTrinsic reserves the right to notify the Finalist in writing (which may be electronically) of an alternative delivery venue or time (or both), in which case the Finalist must comply with any such notification.

By delivering or arranging for the delivery of the portrait by an agent to Arts Edge as outlined above, or by providing the portrait to ARTrinsic by any other means agreed between the Finalist and ARTrinsic, the Finalist agrees to their portrait being held by ARTrinsic and displayed as part of and for the duration of any display or exhibition of Prize portraits.

Exhibition Requirements

The Finalist must:

- (a) clearly label their portrait with the Finalist’s name and the title of the portrait; and
- (b) ensure the portrait is in a reasonable condition for exhibiting, (together, “Exhibition Requirements”).

The Finalist agrees to their portrait being:

- (a) photographed for digital or printed display purposes; and
- (b) framed, by Arts Edge for consistency and professionalism.

Arts Edge will provide a discounted framing rate for the portraits and will ensure the portrait is fitted with 25mm D-ring hooks on the back, a quarter of the way down from the top of the portrait, for ease of hanging.

Parents or guardians or the school teacher of the Finalist will be given the opportunity, upon delivery of the portrait to Arts Edge, to choose and purchase from Arts Edge an appropriate discounted frame for the portrait.

If the Finalist fails to comply with any of these requirements ARTrinsic may take all reasonable steps to ensure the portrait complies with the Exhibition Requirements.

Portraits hanging

Portraits may not be displayed to the Finalist's satisfaction owing to the limited space available at any display or exhibition venue. Portraits are hung at the sole discretion of ARTrinsic, and agents and/or staff of ARTrinsic and no discussion will be entered into with the Finalist.

Exhibition of Portrait

The Finalist grants ARTrinsic permission to display or exhibit their portrait, or a print or digital reproduction of their portrait:

- (a) in an exhibition of selected Finalists for the Prize at the Brookfield Tower or such other venue as ARTrinsic's Board ("Board") may, in its absolute discretion, determine ("Main Exhibition");
- (b) in a printed exhibition at the Perth Cultural Centre of all or some of the Finalists for the Prize for a period of up to one month ("Subsequent Exhibitions"); and
- (c) in an electronic exhibition of selected Finalists for the Prize at the Perth Cultural Centre and the City of Perth Library big digital screens.

The Finalist acknowledges and agrees to ensure that the original portrait is available for the entire duration of the Main Exhibition, whether or not they are the owner of the portrait.

Final Judging & Announcement of Winners

Judging of the Finalists' portraits to award the Student Prizes and Squire Patton Boggs (AU) School Prizes will be undertaken whilst the portraits are exhibited at the Main Exhibition ("Final Judging").

The portraits will be judged for award of the Student Prizes and Squire Patton Boggs (AU) School Prizes by three judges selected by ARTrinsic ("Judges"). The award of the Student Prizes and Squire Patton Boggs (AU) School Prizes are at the sole discretion of the Judges.

ARTrinsic may, at its sole discretion, reject a Finalist's portrait from:

- (a) Final Judging; or
- (b) any display or exhibition,

for any reason, including but not limited to failing to comply with the Exhibition Requirements, if the portrait differs from or was misrepresented by the Portrait Images, if the portrait does not meet (at the Judges' discretion) the terms and conditions of the Prize (including but not limited to the requisite size, Subject, medium or otherwise requirements).

ARTrinsic reserves the right to revoke the award of any Student Prizes and Squire Patton Boggs (AU) School Prizes (and any associated privileges) and give them to another Finalist or School respectively, if the Finalist:

- (a) declares false information in the Entry Form or during the course of the Prize; or
- (b) fails to comply with their obligations under these terms and conditions.

ARTrinsic or the Judges may, at their discretion, not award any Student Prizes or Squire Patton Boggs (AU) School Prizes. The decisions of ARTrinsic and the Judges are final and no challenges will be permitted.

Sales of portraits

The Finalist may notify ARTrinsic in the "Portrait Details" section of the Entry Form whether they wish to have the portrait offered for sale.

No commission will be charged on the sale of Finalists' portraits.

Portraits which are not sold during the Main Exhibition shall be returned to the custody of the Finalist in accordance with the "Collection of Portrait after Exhibition" clause.

Finalists are responsible for arranging the delivery of portraits which are sold.

The Finalist warrants that the entrance of their portrait into the Prize, including any subsequent sale of their portrait, does not breach any contract which the Finalist has entered into with a third party (including, but not limited to, any arrangement with a gallery or venue through whom the Finalist is represented). The Finalist hereby indemnifies ARTrinsic for any loss or damage incurred by ARTrinsic as a result of a claim by a third party that the Finalist has breached a third party contract.

Collection of Portrait after Exhibition

The Finalist:

- (a) must collect their portrait from the Main Exhibition venue (Brookfield Tower, 125 St Georges Terrace, Perth) on Saturday 24 November 2018 between the hours of 10:00am and 2:00pm (AWST);
- (b) is responsible for all transport, freight and collection costs; and
- (c) if having their portrait collected by a courier, must ensure all paperwork for the relevant couriers is provided to ARTrinsic before the date for collection. No portraits will be returned without completed courier documentation including the return address for delivery of the portrait and the consent of the Finalist (and, where applicable, the recipient).

Insurance & Liability

The Finalist is responsible for insurance for their portrait.

Finalists agree and acknowledge that if their portrait is exhibited, their portrait may be exhibited in a public venue and is therefore subject to risk due to unforeseen actions of the public.

ARTrinsic, Brookfield and any venues at which the Finalist's portrait is exhibited and their officials, volunteers, employees, contractors, agents and servants, will not be liable for any loss or damage of whatever kind or nature to any person or property (including the Finalist's portrait) arising out of or in conjunction with:

- (a) transportation or movement of the Finalist's portrait;
- (b) negligence on the part of ARTrinsic, Brookfield or any venues at which the Finalist's portrait is exhibited and their officials, volunteers, employees, contractors, agents and servants; or
- (c) possession, control, storage, display or exhibition of the Finalist's portrait.

The Finalist is therefore encouraged and agrees to procure appropriate insurance to cover:

- (a) the portrait's transportation to and from the Main Exhibition and any other displays or exhibitions;
- (b) possession or control of the portrait by third parties; and
- (c) the portrait during storage or display at the Main Exhibition and any other display or exhibition of the portrait.

The Finalist hereby indemnifies and holds harmless ARTrinsic, Brookfield and any venues at which the Finalist's portrait is exhibited and each of their officials, volunteers, employees, contractors, agents and servants responsible for any claims of whatever kind or nature to any person or property (including the Finalist's portrait) arising out of or in conjunction with:

- (a) transportation or movement of the Finalist's portrait;
- (b) negligence on the part of ARTrinsic, Brookfield or any venues at which the Finalist's portrait is exhibited and their officials, volunteers, employees, contractors, agents and servants; or
- (c) possession, control, storage, display or exhibition of the Finalist's portrait.

ARTrinsic will exercise due care in handling and protection of the portrait.