

From:

The Board of Trustees of the National Gallery (the “**Gallery**”)
Trafalgar Square,
London WC2N 5DN

To:

[Creator’s Name]

Address:

DATE: [Date of agreement]

Re: Engagement of the Creator by the Gallery – 200 Creators project

This Agreement sets out the basis upon which the Gallery wishes to engage the Creator to undertake as part of the 200 Creators project which is defined in more detail in the Brief (the “**Project**”). Once countersigned by the Creator, this letter agreement forms a legally binding agreement between the parties (together the “**parties**”). This Agreement comprises the following (a) the Contract Details and (b) the Agreed Terms. If there is any ambiguity or conflict between the Contract Details and the Agreed Terms, a term contained in the Contract Details shall have priority over one contained in the Agreed Terms.

Contract Details

| | |
|--------------------------|---|
| Creator: | [Creator name, address and email contact for notices purposes] |
| Project: | The project being organised by the Gallery with the project name “200 Creators”, which is more particularly described in the Brief in Annex 1. |
| Effective Date: | [Date of agreement] |
| Fee: | £4,000 exclusive of VAT. |
| Payment schedule: | The Fee shall be payable in the following instalments, following the process in clause 4: First instalment of £1,000 plus VAT to be invoiced after 1 st February 2024; Second instalment of £3,000 plus VAT to be invoiced after completion and approval of the Content. |

| | |
|----------------------------|--|
| Services: | The Contractor shall provide the services described in the Brief in particular (i) creation of the Content;(ii) approved, share the Content on the Media during the Live Period; (iii) creation and sharing of the Analytics Reports; and (iv)attendance at the Events and engagement opportunities (the Creator shall notify the Gallery in advance of any accessibility provision and suitable provision shall be provided with the agreement of the Gallery). |
| Content: | The content to be created by the Creator as part of the Services. |
| Media: | The Creator shall share the Content on one of the platforms submitted as part of their application which meets the application criteria (in respect of followers and engagement). The Creator shall then post the Content to all other social media platforms that they are publicly active on. |
| Live Period: | The Creator shall share the Content on the Media for of one year from their first publication in accordance with the terms of the Brief (where the relevant social media platform(s) allow). |
| Analytics Reports: | Anonymised information from the Media showing the following data for the Content during the Live Period to be provided to the Gallery on such intervals as indicated by the Gallery and as applicable to the relevant Media; <ul style="list-style-type: none"> • Impressions or reach • Engagement • Total views |
| Editorial Controls: | The Gallery may give feedback on the Content prior to uploading and may require the Creator to make post-production edits or changes only to meet the aims of the Brief, correct factual inaccuracies and achieve conformity with the Media platform's terms of use, the law, the CAP and BCAP Codes and regulatory guidance. |
| Exclusivity Period | The period from 7pm BST on 2 July 2024 until 7pm BST on 3 July 2024. |

Agreed Terms

1. **The Creator's Obligations**: The Creator shall:
 - a. perform the Services in a competent manner and to the best of their skill and ability;
 - b. promptly comply with the Gallery's reasonable instructions in connection with this Agreement (including without limitation including Safeguarding, Health and Safety, Social Media Guidelines, Brand Guidelines, Data Protection, Anti-Bribery and Fire Precautions) which are drawn to the Creator's attention from time to time;
 - c. create the Content in accordance with the Brief;
 - d. complete and deliver the Content in accordance with the timescales and milestones set out in the Brief;
 - e. once approved in accordance with the Editorial Controls, publish the Content on the Media in accordance with the Brief for at least the Live Period (but adhering to the requirements of clause 3);
 - f. keep the accounts related to the Media available and open during the Term so that they are publicly accessible and not locked or private;
 - g. in publishing the Content, to use an appropriate disclosure (such as #ad) in the Content in a way that is clear and comprehensible, and which follows the current regulatory rules or guidance on the use of such hashtags;
 - h. attend and participate in public events, press conferences, meetings, as shall be reasonably required by the Gallery in connection with the Project, particularly those specified in the Brief;
 - i. provide the Analytics Reports;
 - j. be responsible for obtaining all licences, permissions and consents required for the creation and use of the Content, and if required provide evidence of such licences, permissions and consents, if required;
 - k. not make any derogatory statement relating to the Gallery or do anything in public, online (including on the Media and any other social media), to the press or elsewhere which has or could have a detrimental effect on the Gallery's brand and/or reputation;
 - l. at the request of the Gallery remove the Content or any part of the Content from the Media as soon as practicably possible where such Content or part of the Content (i) breaches the terms of this Agreement (ii) is the subject of an allegation of

infringement of third party intellectual property rights; or (iii) is derogatory or otherwise has or could have a detrimental effect on the Gallery's brand and/or reputation; and

- m. where the Content includes a work or works which is capable of publication, display or performance outside the Content, if such works are displayed, published or performed, the Creator shall use or shall ensure that any relevant third party uses the following credit:

"Created for the National Gallery's NG200 200 Creators Project, 2024".

1. **The Gallery's Obligations:** The Gallery shall:

- a. licence to the Creator certain intellectual property rights as described in clause 5 below;
- b. provide such support as is described in Annex 1 to the extent that such support is within the Gallery's budget for the Project;
- c. use its reasonable endeavours to promote and publicise the Project.

2. **Exclusivity and Embargo:**

- a. During the Exclusivity Period the Creator shall not post (either directly on its own social media channels or by creating content to be posted on a third party's social media channels during the Exclusivity Period) any posts where such third party or the subject or focus of the content, in the Gallery's reasonable opinion competes with the activities and objectives (both commercial and non-commercial) of the Gallery.
- b. Between the Effective Date and the date that the Gallery publicly announces which creators have been picked to be involved in the Project (anticipated to be in April 2024) ("**Announcement Date**") the Creator shall not publicise their involvement in the Project or their relationship with the Gallery and shall not upload, publish or otherwise communicate the Content (or any part of it) or any content, statement or information which relates to or discloses the Project or their relationship with the Gallery. Between the Announcement Date and the beginning of the Live Period, the Creator shall be permitted to publicise their involvement in the Project and their relationship with the Gallery, but they shall not upload, publish or otherwise communicate the Content (or any part of it) or any

information, content or statement which may disclose or the nature of the Content.

3. The Fees and Expenses:

- a. In consideration of the provision of the Services, the National Gallery shall pay to the Creator the Fee all of which shall be exclusive of VAT, if applicable.
- b. The Creator shall submit invoices for the Fees to the Gallery in the intervals stated in the Payment Schedule. The Gallery shall notify the Creator of the supporting information to be included or to accompany any invoices for them to be processed.
- c. Fees are not payable for absence for any reason (including illness, leave, public or local holidays or any force majeure event). The Creator acknowledges that they may be required to reimburse all or part of the Fees if the Content is not completed.
- d. Payments for the Fees shall be made electronically within 30 days of receipt of the required documentation by the Gallery. Payment shall be made in pounds sterling (GBP) to an account nominated by the Creator.
- e. As an acknowledgement of engagement with the Project, the Creator shall be provided with a year's single membership to the Gallery, such membership to commence in July 2024.
- f. Except for the Fees, the Creator is not entitled to any further remuneration, bonus, expenses or benefit of any kind.

4. Intellectual Property Rights

- a. Subject to clause 6, the Gallery agrees that all intellectual property rights in (i) the Content and any other materials created by the Creator in performance of their obligations in relation to the Project and (ii) any of the Creator's pre-existing trade marks, service marks, logos and other materials connected with the Creators' brand, names, image, voice and likeness ("**Creator Assets**") shall vest in and remain the sole property of the Creator at all times.
- b. The Creator grants to the Gallery (and National Gallery Global Limited, if applicable) a non-exclusive, perpetual and irrevocable, royalty free, sublicensable licence to store, copy use and publish and to allow others to use and publish the Content and the Creator Assets (including any recording, reproduction or film made by the Gallery thereof) including, without limitation the uploading of the Content and Creator Assets to the Gallery's website, marketing channels and social media channels and display within the Gallery (e.g. on "in

Gallery” screens) for the purposes of (i) promoting the Project (ii) promoting the bicentenary activities of the Gallery (iii) promoting any future events and projects at the Gallery (iv) retaining the Content for the Gallery’s archives and for use in accordance with the Gallery’s objects; (v) inclusion within the “Behind the Scenes” project, a series of content of the inner workings of the Gallery; and (vi) editing, copying, adding to, translating the Content as the Gallery sees fit in connection with the foregoing. The Creator acknowledges that the Gallery is under no obligation to use, publish or otherwise communicate the Content or the Creator Assets.

- c. The Creator acknowledges and agrees that the Gallery has the unlimited right to edit, copy, alter, add to, take from, adapt and translate the Content and the Creator irrevocably and unconditionally waives the benefit of their moral rights arising under Parts I and II of the CDPA and performer's non-property rights arising under Part II of the CDPA and any similar laws of any jurisdiction in favour of the Gallery and all its assignees and successors in title of or to the rights in the Deliverables.
- d. The Creator shall provide to the Gallery the original files or copies of the original files relating to the Content to allow the Gallery to use the Content for the purposes identified in the licence in this clause 4.
- e. For the avoidance of doubt, any commercial use of the Content other than directly in connection with the Project by any party shall be subject to the prior written approval of all parties.
- f. The Creator acknowledges that the Gallery is not responsible for third parties’ use of the Content and Creator Assets or their removal from media outside its control either during or after expiry of the Term.

5. Gallery Licensed IP

- a. The Gallery may provide materials (including digital images) to the Creator for the purposes of the Project (“**Gallery Materials**”). Such Gallery Materials may be provided directly by the Gallery or by National Gallery Global Limited on its behalf. The Gallery hereby grants to the Creator a non-exclusive, worldwide, revocable, non-sublicensable (save for where this is required in order to publish the Content on social media channels) licence to use the Gallery Materials for the purpose of (i) participating in the Project and creating the Content, whether by incorporating the Gallery Materials into the

Content (ii) and to the extent that any Gallery Materials are incorporated into the Content, to use, publish and communicate to the public the Content via social media channels both during the Project and thereafter, provided that such use is for non-commercial purposes. The Creator acknowledges and agrees that other than as stated in this clause 6a it shall not acquire any right or in or title to the Gallery Materials and that it shall not use the Gallery Materials for any other purpose.

- b. Any goodwill derived from the use of the Gallery Materials by the Creator shall accrue to the Gallery.
- c. If the Creator desires to either film or take photographs in the Gallery as part of the creation of the Content, the Creator may be required to enter into an additional agreement with the Gallery to allow such filming or photography.

6. Third Party Materials: If the Creator wishes to include in the Content materials protected by intellectual property rights owned or controlled by third parties ("**Third Party Materials**") it shall (i) Identify such Third Party Materials to the Gallery and not include such Third Party Materials without the Gallery's prior written consent (save where it is so minor or incidental as to not infringe third party rights) and (ii) secure any licences, consents or waivers required for the use of such Third Party Materials by both the Creator and the Gallery as envisaged in this Agreement and provide evidence to the Gallery of having done so on reasonable notice and request.

7. Warranties

- a. Each party warrants to the other party that:
 - i. it has and shall continue to have throughout the duration of this Agreement, full power and authority to enter into and perform this Agreement; and;
 - ii. it has not entered into and will not enter into any agreement or arrangement and has not done, or will not do, any act or omission which is, or might be considered to be inconsistent with the terms of this Agreement.
- b. The Creator warrants, represents and undertakes:
 - i. the Content is original to the Creator and is the Creator's own work and shall not be copied wholly or in substantially from any other work or other source, subject to the inspiration from the Gallery Materials licensed in Clause 6 and the Third Party Materials identified in clause 7;
 - ii. the Content is not subject to and is not likely to be subject to any dispute with a third party;

- iii. the Content and the use of the Content by both the Creator and the Gallery will not infringe the rights of any third party or otherwise be unlawful;
 - iv. the Content and the Creator Assets shall not contain any defamatory matter, breach any contract, law or duty of confidentiality, infringe data protection rights or constitute contempt of court or obscenity;
 - v. the Content and the Creator Assets (excluding the Gallery Materials) shall comply with the relevant Media platform's terms of use, the law, the CAP and BCAP advertising codes, the Competition and Markets Authority's guidance on social media usage and endorsements, the ISBA Code of Conduct on Influencer Marketing (to the extent applicable) and all other applicable regulatory guidance as from time to time;
 - vi. the Creator has the right to provide and licence the Content as described in clause 5;
 - vii. to the best of their knowledge, they have not used paid followers, bots or other forms of technology to artificially inflate their follower numbers or make their posts appear more popular.
- c. The Creator shall indemnify the Gallery against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred by the Gallery arising out of or in connection with any third-party claims or any action, adjudication or decision taken against Company by any regulatory body, in each case directly or indirectly arising (in whole or in part) out of any breach of clause 8b.

8. Liability:

- a. Nothing in this Agreement excludes or limits the liability of any party for death or personal injury caused by that party's negligence, fraud or fraudulent misrepresentation or any other liability which cannot be excluded or limited under applicable law.
- b. Subject to clause a, neither party shall be liable to the other for loss of profits or income, loss of sales or business, loss of agreements, loss of opportunity, indirect or consequential loss.
- c. Subject to clause 10a, the Gallery's maximum aggregate liability to the Creator arising out of or in connection with this Agreement, whether in tort (including negligence and breach of

statutory duty, howsoever arising) breach of contract or otherwise shall in no circumstances exceed the Fees paid by the Gallery to the Creator.

9. **Status:** The Creator is an independent contractor making its services available to the Gallery. Nothing in this Agreement shall render the Creator an employee, worker, agent or partner of the Gallery and the Creator shall not hold itself out as such. The Creator is responsible for all liabilities in respect of taxes, including national insurance, income tax, VAT or similar applicable social security contributions in respect of any fees payable under this Agreement.
10. **Confidentiality:** For the purposes of this Agreement “**Confidential Information**” means all information relating to the Gallery’s business, clients (including any persons associated with the event) or financial or other affairs which has been provided to the Creator or which shall be provided to the Creator including this Agreement. The Creator shall keep secret and confidential any and all Confidential Information, not use or disclose to any person any Confidential Information which it has or acquires including for any purpose outside of this Agreement and use the Confidential Information solely in connection with the performance of this Agreement. This paragraph shall not apply to use or disclosure of Confidential Information required to be used or disclosed by law or by any competent regulatory body, Confidential Information which becomes publicly known other than through a breach of this Agreement or disclosure to a third person where such disclosure is strictly necessary for the purpose of fulfilment of the Creator’s obligations under this Agreement.
11. **Term and Termination:** This Agreement shall be deemed to have commenced on the Effective Date and shall continue, unless it is terminated in accordance with this clause 13, until the parties have completed their obligations hereunder (which is anticipated to be 31 July 2025). Without prejudice to any other rights and remedies which any party may have, this Agreement may be terminated: a. by any party, immediately on written notice, if one of the other parties commits a material or persistent breach of any term of this Agreement which in the case of a breach capable of remedy shall not have been remedied within 7 days of the receipt by the other of a written notice identifying the breach and requiring its remedy (including any breach of the Gallery’s policies or applicable law); b. by the Gallery upon 14 days’ written notice to the Creator at any

time; or c. by the Gallery, immediately on written notice, if in the Gallery's reasonable opinion, the Creator conducts themselves in an unacceptable manner, demonstrates incompetence or any negligence in the carrying out of the Project or development of the Content, otherwise acts in such a way which may damage the reputation of the Gallery or organisations associated with them (including its sponsors or its sponsoring department), or does anything which adversely prejudices or does or fails to do anything which in the reasonable opinion of the Gallery is likely to prejudice or adversely affect the interests or reputation of the Gallery.

12. **Consequences of Termination**: On termination or expiry of this Agreement for whatever reason: (a) the Creator shall immediately cease to use any Confidential Information and the Gallery IP and shall, as the Gallery directs, either destroy or promptly return all Confidential Information in its possession or control and take down the Content; (b) within 7 days of termination the Creator shall submit a final invoice to the Gallery relating to any outstanding fees accrued up to the date of termination. The Gallery shall have no obligation to pay any outstanding fees if it has terminated the Agreement under clause 13(a) or if the Content has not been completed and delivered; and (c) expiry or termination shall not affect such provisions which expressly or by implication should survive its termination or expiry including the licences granted hereunder if not expressly terminated.

13. **General**:

- a. **Interpretation**: In this Agreement unless otherwise specified, reference to: (a) the words "include" and "including" shall be deemed to mean "including but not limited to"; and (b) a person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists).
- b. **Freedom of Information**: The Gallery is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and the parties agree that if the Gallery receives any request under the FOIA or EIR for information relating to this Agreement, it will, prior to responding, notify the Creator of the same and of its proposed response to the same. The Gallery will give consideration to any representations made by the Creator in relation to the proposed response before submitting

the same, provided always that it is agreed that the ultimate form of response is the sole responsibility of the Gallery.

- c. **Third Party Rights:** A person who is not a party to this Agreement may not enforce its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or any other similar legislation or law around the world.
- d. **No Waiver:** No failure or delay by a party to exercise its rights under this Agreement or by law shall constitute a waiver of that right or remedy.
- e. **Severance:** If any provision or part thereof is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible it shall be deemed deleted.
- f. **Variation:** No variation of this Agreement shall be effective unless it is in writing and signed by all parties.
- g. **Assignment and Subcontracting:** The Creator is not entitled to assign, transfer, charge, encumber, sub-contract, sub-license or otherwise deal with the whole or any part of any Agreement or its obligations and rights under it without the prior written consent of the Gallery.
- h. **Entire Agreement:** Except in the case of fraud or fraudulent concealment, each party acknowledges that: (a) this Agreement constitutes the entire and only agreement between the parties and supersedes all previous agreements between the parties; and (b) in entering into this Agreement, it does not rely, and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) by any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.
- i. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which when executed shall be an original;
- j. **Law and Jurisdiction:** This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England. The parties agree that the courts of England have non-exclusive jurisdiction to settle any dispute that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Please can you sign and date this Agreement where indicated below and then return it to us to indicate that you agree to the terms of this Agreement.

Yours faithfully

.....

for and on behalf of the Board of Trustees of the National Gallery

Read and agreed:

..... Dated:

ANNEX 1: The Brief

Creative Collaborator commitments

If you accept an invitation to be a Creative Collaborator, you will:

- commit to attending the launch event on 2 July 2024 at the National Gallery.
- Content commitment:
- Initial content to be posted on 2 July 2024 at the launch event.
- Subsequent content to be posted throughout July and August 2024 during the Summer of Creativity which includes Summer on the Square.
- Tag the National Gallery in all posts on Instagram and TikTok.
- Indicate that your content is part of a paid partnership.
- Link to the National Gallery's channel in your YouTube descriptions.
- Sustained engagement through the one-year National Gallery membership period, relating to NG200 and Bicentenary events.
- Content to be posted on the channel that matches the selection criteria.
- Content to be cross promoted across your other active social media channels.
- Notify the National Gallery content team with links when you have posted.
- Provide analytics from your content after one month, including impressions or reach, engagements, and video views (where applicable).

Creative Collaborator deliverables

You will be required to create content in the following formats on your channel that meets the minimum criteria and is specified in your creative proposal (following your participation in the Ideas Lab Event on 30 October 2023).

- YouTube – Produce 1x Longer Video (10mins +) and a Short
- TikTok – Produce 3x Videos
- Instagram – Produce 1x Reel, 1x Set of Stories

It would then be expected that you would share this content you have created on all public social media accounts that you are active on from the launch day of 2 July 2024.

Please note: If you are working on an alternative online platform, we will agree deliverables with you on a case-by-case basis.

You will need to clearly show in your posts that the project is a paid partnership, by using in-built platform signalling and/or #ad – in line with current legal requirements.

You will also be required to provide to the Gallery original files or copies of the original files (in their original non-posted format) relating to the Content to allow the Gallery to use the Content for the purposes identified in this Agreement. The files will need to be supplied on or before the production deadline, Monday 22 April 2024 at 23.59 BST.

Timeline and key milestones of the project

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| Creative Collaborators production period: | Monday 5 February – Monday 22 April 2024 |
| Announcement of Creative Collaborators | April 2024 |
| *Production deadline: | Monday 22 April 2024 (23:59) |
| National Gallery Content sign off: | Monday 29 April |
| Announcement of Creative Collaborators: | April 2024 |
| *Launch event at National Gallery, London | Tuesday 2 July 2024 |
| National Gallery membership (one year) (starts from) | Tuesday 2 July 2024 |
| *Applicants must be able to commit to this date | |

Creation and approval process

Development of the content will take place from 5 February – 21 April 2024. We estimate that it will require approximately three to four weeks of work across this period.

Before Creative Collaborators publish any content, we may give feedback and require edits. This would just be to meet the aims of the Brief, correct factual inaccuracies, or conform to platform terms of use or the law.

No content will be published until the 200 Creators launch event on Tuesday 2 July 2024 with following content to be posted throughout July and August 2024 during the National Gallery's 'Summer of Creativity'.