

**From:**

**(1) The Board of Trustees of the National Gallery (the “Gallery”)**

The National Gallery  
Trafalgar Square  
WC2N 5DN

**(2) The Royal Opera House Covent Garden Foundation (the “ROH”)**

The Royal Opera House  
Covent Garden  
London WC2E 9DD

**To:**

(3) [ARTIST NAME]  
[ADDRESS]  
(the “Artist”)

Date: [DATE OF AGREEMENT]

Dear [ARTIST NAME]

**Re: Engagement of the Artist by the Gallery**

This Agreement sets out the basis upon which the Gallery and ROH wish to commission the Artist to undertake a digital commission on their behalf as part of *The Rules Do Not Apply* (the “Project”). Once countersigned by the Artist, this letter agreement forms a legally binding agreement between the three parties (together the ‘parties’).

The parties agree as follows:

1. **The Artist’s Obligations:** The Artist shall:
  - a. create a commission (the “**Commission**”) in accordance with the brief (the “**Brief**”) in Annex 1;
  - b. complete the Commission in accordance with the timescales set out in the Brief;
  - c. deliver a copy of the Commission to the Gallery on or before 19/03/21, unless otherwise agreed;
  - d. attend and participate in such meetings and events as reasonably required by the Gallery and ROH during the Project; and
  - e. attend and participate in such public events, press conferences (whether physical or digital) as shall be reasonably required by the Gallery and ROH in connection with the Project.
2. **The Artist’s Warranties:** The Artist warrants and undertakes that they shall undertake their obligations in paragraph 1:
  - a. in a timely and professional manner in accordance with the timetable set out in the Brief;

- b. with all the reasonable skill and care of a person who is an expert in the field for which the Artist has been instructed;
  - c. in accordance with the Gallery's and ROH's reasonable instructions, policies and procedures (including Safeguarding, Health and Safety, Data Protection, Anti-Bribery and Fire Precautions) which are drawn to the Artist's attention from time to time;
  - d. in accordance with all applicable law (including the Bribery Act 2010 and the Modern Slavery Act 2015).
3. **Obligations of the ROH and the Gallery:** The Gallery and the ROH shall:
- a. license to the Artist certain intellectual property as described in paragraph 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, including artistic and technical mentoring; and
  - c. use their reasonable endeavours to promote and publicise the Commission and the Project. If practicable, the Gallery shall host the Commission or a version thereof on its website.
4. **The Fees:**
- a. The Artist shall be paid £4,000 (the "Fees") in respect of its obligations under this Agreement subject to submission of a valid invoice by the Artist to the Gallery. The Fee shall be paid in two instalments, the first of £3,000 on completion of this Agreement and the second of £1,000 following delivery of the Commission under paragraph 1(c) above. The Fees are exclusive of VAT which (if applicable) shall be payable in addition thereto. Payments shall be made electronically within 30 days of the receipt of a valid invoice by the Gallery, which may be submitted at any time following the completion of the milestones in respect of payment set out above (entry into this Agreement and delivery of the completed Commission). Payment shall be in Pounds Sterling (GBP) to an account nominated by the Artist. Fees are not payable for absence for any reason including illness, leave, public or local holidays or any force majeure event. The Artist acknowledges that they shall not be entitled to the second instalment of the Fees and may be required to reimburse all or part of the first instalment of the Fees if the Commission is not completed. Except for the Fees and subject to paragraph 4(b) below, the Artist is not entitled to any further remuneration, bonus or benefit of any kind.
  - b. Expenses incurred by the Artist in the creation of the Commission and performance of this Agreement shall be covered by the Fees unless otherwise agreed in advance with the Gallery (for example, the Gallery envisages meeting reasonable travel costs, if approved in advance). It is not envisaged that additional expenses shall be provided to create or complete the Commission.
  - c. If additional accessibility provision is required, this shall be notified to ROH and the Gallery and suitable provision shall be provided by agreement with ROH.
5. **Licensed IP:**
- a. ROH hereby grants to the Artist a royalty-free, non-exclusive, worldwide, perpetual non-sub-licensable licence to use the ROH IP (as defined in Annex 2) for the purpose of: (i) creating the Commission, whether by incorporating the ROH IP into the Commission or using all or part of the ROH IP as part of the Commission; and (ii) to the extent any intellectual property from the ROH IP is incorporated into the Commission, as part of the display of the Commission both during the Project and thereafter provided such use is for non-commercial purposes. The Artist acknowledges and agrees that they may not use the ROH IP for any other purpose.
  - b. The Gallery hereby grants to the Artist a royalty-free, non-exclusive, worldwide, perpetual, non-sub-licensable licence to use the Gallery IP (as defined in Annex 2) for the purpose of: (i) creating the Commission, whether by incorporating the Gallery IP into the Commission or

using all or part of the Gallery IP as part of the Commission; and (ii) to the extent any intellectual property from the Gallery IP is incorporated into the Commission, as part of the display of the Commission both during the Project and thereafter provided such use is for non-commercial purposes. The Artist acknowledges and agrees that they may not use the Gallery IP for any other purpose.

- c. Nothing in this Agreement shall transfer or assign to the Artist any intellectual property rights in either the ROH IP or the Gallery IP.
- d. ROH and NG hereby grant each other a licence to use each other's trading names in relation to the promotion and realisation of the Project, subject to the other's prior written approval, such approval not to be unreasonably withheld or delayed.

#### **6. The Commission:**

- a. The Artist warrants, represents and undertakes that in relation to the Commission:
  - i. it is original to the Artist and is the Artist's own work and shall not be copied wholly or substantially from any other work or any other source, subject to the inspiration from the intellectual property licensed under paragraphs 5(a) and 5(b);
  - ii. it is not subject to, nor likely to be subject to, any dispute with a third party; and
  - iii. the Commission and the use of the Commission (in exercise of the rights granted in paragraph 6(b)) by the Gallery and the ROH will not infringe the rights of any third party, or otherwise be unlawful (including defamatory or illegal); and
  - iv. the Artist has the right to provide and license the Commission as described in this paragraph 6;
- b. The Artist hereby grants to the ROH and the Gallery a non-exclusive, worldwide, royalty free, sub licensable, perpetual and irrevocable license to use the Commission (including any recording, reproduction or film made by the Gallery thereof) for the purposes of: (i) publicising, promoting and marketing the Project to which the Commission relates, the ROH and the Gallery; (ii) displaying the Commission on the Gallery's and ROH's websites; (iii) retaining a recording, transcript or reproduction of the Commission for the Gallery's and ROH's archives and for use in accordance with the Gallery's objects; and (iv) editing, copying, adding to, translating the Commission as the Gallery and ROH see fit in connection with (i), (ii) and (iii);
- c. the Artist acknowledges and agrees that ROH and the Gallery may use their name, fame and image as required to publicise, promote and market the Project, as well as in relation to the display and promotion of the Commission;
- d. for the avoidance of doubt: (i) any commercial use of the Commission other than directly in connection with the Project by any party shall be subject to prior written approval of all parties and the prior written approval of, and good faith negotiation of payment and terms of any such commercial use with, Kristen McNally; and (ii) nothing in this Agreement transfers ownership of any intellectual property rights connected with the Commission to the Gallery or the ROH, except in respect of the ROH IP and the Gallery IP;; and
- e. the Artist acknowledges and agrees that the Gallery's exercise of its rights under this Agreement (and in particular paragraph 6(b) and 6(c) shall be the legal basis upon which the Gallery shall process the Artist's personal data.

#### **7. Warranties:** Each party warrants to the other party that:

- a. 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
- b. it has not entered into, and will not enter into, any agreement or arrangement and has not done, and will not do, any act or omission which is, or might be, inconsistent with the terms of this Agreement.

**8. Press and Accreditation:**

- a. The Gallery and ROH will consult with the Artist concerning any publicity concerning the Project and the Commission's display. However, the Gallery and ROH will make any final decision on any such publicity. The Gallery and ROH shall be responsible for any press and publicity concerning the Project and the Artist shall not publicise this Agreement nor make any communication to the press or media about any matter relating to the Gallery and ROH, without the Gallery and ROH's prior permission.
- b. The Gallery and ROH require the following display credits (which ROH and the Gallery may update at any time prior to the delivery of the Commission to reflect any further sponsorship received):
  - i. whilst on display on the Gallery's website the Commission shall be displayed with the following credit line: *"Created by: [ARTIST NAME]]  
Commissioned by the National Gallery, London, as part of National Gallery X and Audience Labs at the Royal Opera House  
Inspiration from using Crivelli's Gardens by Paula Rego and using the motion capture data of "Eve" choreographed by Kristen McNally  
Supported by Kings College London and Google Arts and Culture"*
  - ii. Following the closure of the Project, the Artist shall ensure that whenever the Commission is displayed it shall be displayed with the following credit line:  
*"Created by: [ARTIST NAME]]  
Commissioned by the National Gallery, London, as part of National Gallery X and Audience Labs at the Royal Opera House in March 2020  
Inspiration from Crivelli's Gardens by Paula Rego and using the motion capture data of "Eve" choreographed by Kristen McNally  
Supported by Kings College London and Google Arts and Culture"*

9. **Liability:** 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. Subject to the foregoing, the Gallery and ROH's maximum aggregate liability to the Artist 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 in aggregate of the Fees paid by the Gallery to the Artist.

10. **Status:** The Artist is an independent contractor making its services available to the Gallery and ROH. Nothing in this Agreement shall render the Artist an employee, worker, agent or partner of the Gallery or ROH and the Artist shall not hold itself out as such. The Artist 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.

11. **Confidentiality:** For the purposes of this Agreement "**Confidential Information**" means all information relating to the Gallery and ROH's business, clients (including any persons associated with the event) or financial or other affairs which has been provided to the Artist or which shall be provided to the Artist including this Agreement. The Artist 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 Artist's obligations under this Agreement.

12. **Term and Termination:** This Agreement commences on the date on which it is signed by all parties and shall continue, unless it is terminated in accordance with this paragraph 12, until the parties have completed their obligations hereunder. 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 or ROH's policies or applicable law);
  - b. by the Gallery or the ROH upon 14 days' written notice to the Artist at any time; or
  - c. by the Gallery or the ROH, immediately on written notice, if in the Gallery's or ROH's reasonable opinion, the Artist conducts themselves in an unacceptable manner, demonstrates incompetence or any negligence in the carrying out of the Project or development of the Commission, otherwise acts in such a way which may damage the reputation of the Gallery, ROH 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 or ROH is likely to prejudice or adversely affect the interests or reputation of the Gallery or ROH.

13. **Consequences of Termination:** On termination or expiry of this Agreement for whatever reason: (a) the Artist shall immediately cease to use any Confidential Information, the ROH IP and the Gallery IP and shall, as the Gallery directs, either destroy or promptly return all Confidential Information in its possession or control; (b) within 7 days of termination the Artist 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 paragraph 12(a) or if the Commission 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.

14. **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 Artist of the same and of its proposed response to the same. The Gallery will give consideration to any representations made by the Artist 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 Artist is not be 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 and ROH.
- 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

.....  
for and on behalf of the Royal Opera House

Read and agreed:

..... Dated: .....  
[ARTIST NAME]

## ANNEX 1

### The “Brief”

The Rules Do Not Apply is an open call for digital artists and creatives to: explore, play with, and disrupt traditional ideas of art.

We are in a moment of immense uncertainty. While we weather the storm, the pandemic has created a catalyst for reflection and change. Amid the hardship, all of us are rethinking our place in the world. Through this open call, we are looking for proposals for dynamic, imaginative digital ideas that creatively explore the changing world that we all face.

On offer are micro-commissions of £4,000 for three artists/creatives (individuals or teams), who work with technology, to make something surprising using digital tools in response to two works: a piece of choreography and a visual artwork.

The call is open to artists working in any digital form and/or medium. We are actively encouraging applications from artists who identify as a Person of Colour, D/disabled and/or a member of LGBTQIA+ community as we want to actively support artists from communities currently underrepresented in our commission awards. Proposals can be submitted by single artists or collaborative teams.

#### About the artworks:

1. *Eve* (2018) – Creatives will be given access to a piece of choreography by Kristen McNally, performed by Kristen McNally and Lukas Bjørneboe Brændsrød. In 2018, Audience Labs and Google Creative Lab undertook an R&D in Australia, working with Kristen to create a special digital work in which the dancers push boundaries not possible on the physical stage. The piece is about a female dancer emerging into a digital world, exploring how to make and remake, realising her power of creation free from the constraints of the real world. Creatives would be given access to this choreography as motion capture data files (.fbx). Technical info about how to view the motion capture data and possible approaches is provided with the files.
2. *Crivelli's Garden* (1990-91) is a large-scale triptych commissioned from Paula Rego (b. 1935), the National Gallery's first Associate Artist in 1989-90. Chosen to reflect ideas of transformation and empowerment in *Eve*, Rego's painting appropriates the strict linear perspective of 15th-Century painter Carlo Crivelli's house and garden and reimagines the space to explore the narratives of women in biblical history and folklore found in various paintings across the National Gallery. Figures inspired by the Virgin Mary, Saint Catherine, Mary Magdalene and Delilah among others, occupy the same dream-like world and were modelled on National Gallery staff members of the time. Like the character of *Eve*, Rego's painting celebrate defiant women, drawing connections between their powerful narratives and histories. Using the numerous narratives and layered imagery of *Crivelli's Garden* and the choreography of *Eve*, creatives are invited to create a new and powerful work that pushes the boundaries of dimension, representation and the imagination. Creatives will be given access to high-resolution images of the artwork.

The two works chosen as starting points reimagine and disrupt structures of power, refract the old and the new, and play with the unexpected. These are themes we would hope to see explored within these commissions. That being said, the works are offered as starting points: how they are used, interpreted, and remade is up to you.

## Application

We are looking for proposals for original digital visual works/experiences, using the artworks provided as a starting point for experimental works that can be presented online at the end of the commission period in March 2021.

We are not looking for detailed concept proposals – the application form will be used to understand the scope and potential of what you want to achieve through the micro-commission, your creative response to the assets, your technical approach, and any expertise/support you think you might need for during development.

Formats for submission are included in the application form. We will accept proposals for video (high resolution files) or interactive works (exported build/app and video documentation). All proposals must integrate the motion capture assets, and demonstrate some form of response to the Paula Rego work.

The deadline for applications is midnight Sunday 10 January 2021.

Please fill in this expression of interest form to access the choreography and artwork files and the application form to submit a proposal.

If you have any questions or difficulties, or any access needs, please contact [ngx@ng-london.org.uk](mailto:ngx@ng-london.org.uk). If you prefer to speak over the phone to discuss queries please state this in the email and we can arrange a call. If you would prefer to submit your responses to the application form via a video/audio file for access reasons, please send via WeTransfer or YouTube/Vimeo or other relevant web links to [ngx@ng-london.org.uk](mailto:ngx@ng-london.org.uk).

## The micro-commissions

Three winning artists or teams will each be given £4,000 and some bespoke coaching from Audience Labs, National Gallery X, and technical mentorship from Google Creative Lab to produce the micro-commission over a month-long period from February to March 2021.

The micro-commission will cover all fees, and any materials, equipment or expenses that you need to develop the digital work. A panel of judges will award micro-commissions to three successful applicants. The winning applicants will be notified in early February 2021. Development of micro-commissions will take place over a month period from 15 February - 15 March 2021. We anticipate that it would require approximately 2 weeks of work across this period.

Technical support and advice will be provided throughout development however we expect that applicants have the existing expertise and resources to manipulate motion-capture data assets via digital software. Creatives will retain the IP of their work—the IP of the raw data remains with the originating artists and institutions.

The projects will be presented in an online showcase; National Gallery X and Audience Labs will document and support the launch of the projects in March 2021.



## **ANNEX 2**

### **“ROH IP”**

*Eve (2018)* – a choreography by Kristen McNally, performed by Kristen McNally and Lukas Bjørneboe Brændsrød.

In 2018, Audience Labs and Google Creative Lab undertook an R&D in Australia, working with Kristen to create a special digital work in which the dancers push boundaries not possible on the physical stage. The piece is about a female dancer emerging into a digital world, exploring how to make and remake, realising her power of creation free from the constraints of the real world.

Applicants will be given access to this choreography as standard open motion capture data files (.fbx). The files are short phrases of movement and as well as skeleton data, they also include a body (skin). Files can be rendered out into Unity, Unreal or another game engine, or animation software e.g. Cinema 4D or Blender, to create either 3D outputs for interactive or video output.

Files can be accessed by submitting the expression of interest form. They can be opened using Autodesk: <https://www.autodesk.com/products/fbx/fbx-review>, and video files are also provided with the .fbx files.

### **“Gallery IP”**

Crivelli’s Garden is large scale triptych that was first commissioned for the National Gallery Dining Rooms from Paula Rego (b. 1935), the gallery’s first Associate Artist in 1989-90. Inspired by the 15th-Century paintings by Carlo Crivelli, Rego mimics the strict linear perspective of his house and garden and reimagines the space to explore the narratives of women in biblical history and folklore found in various paintings across the National Gallery.

Three artwork image files will be made available to applicants at 6000px and as JPG.