

THE NATIONAL GALLERY

From:

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

The National Gallery
Trafalgar Square
WC2N 5DN

To:

(2) [CREATIVE’S NAME]

[ADDRESS]
(the “Creative”)

Date:

Dear [CREATIVE’S NAME]

Re: Engagement of the Creative by the Gallery

This Agreement sets out the basis upon which the Gallery wishes to commission the Creative to undertake a digital commission on their behalf as part of HOME-Zero (the “**Project**”). Once countersigned by the Creative, this letter agreement forms a legally binding agreement between the Creative and the Gallery (together the “**parties**”). The Project is being delivered by the Gallery in collaboration with Nesta and such other parties as are identified at the date of this Agreement (the “**partners**”).

The parties agree as follows:

1. **The Creative’s Obligations:** The Creative shall:
 - a. create and deliver the experience (the “**Experience**”) in accordance with the brief (the “**Brief**”) in Annex 1;
 - b. create and deliver the Experience in accordance with the timescales set out in the Brief;
 - c. provide all materials required to deliver the Experience to the Gallery on or before [DATE], unless otherwise agreed;
 - d. attend and participate in such meetings and events as reasonably required by the Gallery and its partners 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 its partners in connection with the Project.

2. **The Creative’s Warranties:** The Creative warrants and undertakes that they shall undertake their obligations in paragraph 1 and develop and deliver the Experience:
 - 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 Creative has been instructed;
 - c. in accordance with the Gallery’s reasonable instructions, policies and procedures (including Safeguarding, Health and Safety, Data Protection, Anti-Bribery and Fire Precautions) which are drawn to the Creative’s attention from time to time; and

- d. in accordance with all applicable law (including the Bribery Act 2010 and the Modern Slavery Act 2015).
3. **Obligations of the Gallery:** The Gallery shall:
- a. license to the Creative 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; and
 - c. use their reasonable endeavours to promote and publicise the Experience and the Project.
4. **The Budget:**
- a. The production budget for the Project and the delivery of the Experience is described in Annex 2 (the "**Budget**"). Any fees payable to the Creative (the "**Fees**") shall be paid in accordance with Annex 2 subject always to the provision of valid VAT invoices in the case of the Creative and proof of expenditure in the case of third party costs.
 - b. Sums payable under this Agreement are exclusive of VAT which (if applicable) shall be payable in addition. Payments shall be made electronically within 30 days of the receipt of a valid invoice, which may be submitted at any time following the completion of the milestones in respect of payment set out above. Payment shall be in Pounds Sterling (GBP) to an account nominated by the Creative. Fees are not payable for absence for any reason including illness, leave, public or local holidays or any force majeure event. The Creative acknowledges that they shall not be paid and may be required to reimburse all or part of the first instalment of the Fees if the Experience is not completed and delivered. Except for the Fees and subject to paragraph 4(c) below, the Creative is not entitled to any further remuneration, bonus or benefit of any kind.
 - c. All expenses incurred by the Creative in the creation of the Experience and performance of this Agreement shall be covered by the Budget unless otherwise agreed in advance with the Gallery. It is not envisaged that additional expenses shall be provided to create or complete the Experience.
 - d. If additional accessibility provision is required, this shall be notified to the Gallery and suitable provision shall be provided by agreement with the Gallery.
5. **Licensed IP:**
- a. The Gallery hereby grants to the Creative a royalty-free, non-exclusive, worldwide, perpetual, non-sub-licensable licence to use the "**Gallery IP**" (as defined in Annex 3) for the purpose of: (i) creating the Experience, whether by incorporating the Gallery IP into the Experience or using all or part of the Gallery IP as part of the Experience; and (ii) to the extent any intellectual property from the Gallery IP is incorporated into the Experience, as part of the display of the Experience both during the Project and thereafter provided such use is for non-commercial purposes. The Creative acknowledges and agrees that they may not use the Gallery IP for any other purpose including any commercial purpose without the Gallery's prior written permission.
 - b. Nothing in this Agreement shall transfer or assign to the Creative any intellectual property rights in the Gallery IP.
6. **The Experience**
- a. The Creative warrants, represents and undertakes to the Gallery and its partners, that in relation to the Experience:
 - i. it is original to the Creative and is the Creative'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);
 - ii. it is not subject to, nor likely to be subject to, any dispute with a third party;

- iii. the Experience and the use and display of the Experience (in exercise of the rights granted in paragraph 6(b)) by the Gallery and its partners will not infringe the rights of any third party, or otherwise be unlawful (including defamatory or illegal); and
 - iv. the Creative has the right to provide and license the Experience as described in this paragraph 6;
- b. the Creative hereby grants to the Gallery and its partners a non-exclusive, worldwide, royalty free, sub licensable, perpetual and irrevocable license to use and display the Experience (including any recording, reproduction or film made by the Gallery thereof) for the purposes of: (i) publicising, promoting and marketing the Project; (ii) displaying the Experience at the Gallery's site and on the Gallery's and the partners' websites; (iii) retaining a recording, transcript or reproduction of the Experience for the Gallery's archives and for use in accordance with the Gallery's objects; and (iv) editing, copying, adding to, translating the Experience as the Gallery and its partners see fit in connection with (i), (ii) and (iii);
 - c. the Creative acknowledges and agrees that the Gallery and the partners may use the Creative's name, fame and image (and any trading names) as required to publicise, promote and market the Project, as well as in relation to the display and promotion of the Experience and exercise of the licence in paragraph 6(b);
 - d. for the avoidance of doubt: (i) any commercial use of the Experience other than directly in connection with the Project by any party shall be subject to prior written approval of the parties; and (ii) nothing in this Agreement transfers ownership of any intellectual property rights connected with the Experience to the Gallery, except in respect of the Gallery IP; and
 - e. the Creative 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 Creative'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 shall consult with the Creative concerning any publicity concerning the Project and the Experience's display. However, the Gallery will make any final decision on any such publicity. The Gallery shall be responsible for any press and publicity concerning the Project and the Creative shall not publicise this Agreement nor make any communication to the press or media about any matter relating to the Gallery, without the Gallery's prior permission.
 - b. The Gallery requires the following display credits (which 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: [CREATIVE NAME]
Commissioned by Nesta and National Gallery X (The National Gallery, and King's College London)"*
 - ii. Following the closure of the Project, the Creative shall ensure that whenever the Commission is displayed it shall be displayed with the following credit line: *"Created by: [CREATIVE NAME]
Commissioned by Nesta and National Gallery X (The National Gallery, and King's College London), March 2022"*

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's maximum aggregate liability to the Creative 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 Creative.

10. **Status:** The Creative is an independent contractor making its services available to the Gallery. Nothing in this Agreement shall render the Creative an employee, worker, agent or partner of the Gallery and the Creative shall not hold itself out as such. The Creative 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's business, clients (including any persons associated with the event) or financial or other affairs which has been provided to the Creative or which shall be provided to the Creative including this Agreement. The Creative 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 Creative'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's policies or applicable law);
- b. by the Gallery upon 14 days' written notice to the Creative at any time; or
- c. by the Gallery, immediately on written notice, if in the Gallery's reasonable opinion, the Creative conducts themselves in an unacceptable manner, demonstrates incompetence or any negligence in the carrying out of the Project or development of the Experience, otherwise acts in such a way which may damage the reputation of the Gallery or the partners, 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.

13. **Consequences of Termination:** On termination or expiry of this Agreement for whatever reason: (a) the Creative 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; (b) within 7 days of termination the Creative 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 Creative of the same and of its proposed response to the same. The Gallery will give consideration to any representations made by the Creative 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 except that the partners shall be entitled to enforce such rights as they are granted under this Agreement.
- 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 Creative 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.
- 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

.....
[GALLERY SIGNATORY NAME]
for and on behalf of the Board of Trustees of the National Gallery

..... Dated:
[CREATIVE NAME]

ANNEX 1

The “**Brief**”

[TO BE ADDED]

ANNEX 2

The “Budget”

The production budget for the Project and the delivery of the Experience is £40,000, exclusive of VAT and in-kind contributions.

The “Fees”

The fees shall be paid to the Creative according to the following payment schedule, unless otherwise agreed between the Gallery and the Creative before entering into this agreement:

- i. Payment 1: 33% on signature of the agreement
- ii. Payment 2: 33% on satisfactory completion of the interim milestone, to be defined in Annex 1
- iii. Payment 3: 34% following satisfactory completion of the brief, to be defined in Annex 1.

ANNEX 3

“Gallery IP”