

Licence Agreement

Business Name: White Rabbit Gallery
Entity Name: The Trustee for Dangrove Trust
ABN: 59 475 464 712

For artwork for the WRG Digital Call-Out: Generation Xi

DRAFT

LICENCE AGREEMENT FOR ARTWORK FOR THE WRG DIGITAL CALL-OUT

THIS AGREEMENT is made on the date set out in Item 1 of the Schedule.

BETWEEN

- (1) **WHITE RABBIT GALLERY** (ABN 59 475 464 712) of 30 Balfour Street, Sydney, NSW, 2008, Australia, P: 02 9137 2770, and
- (2) **THE PARTY set out in Item 2 of Schedule 1 (the Artist).**

BACKGROUND

- A. The White Rabbit Gallery has launched a paid opportunity for emerging artists and designers to create an artwork for the White Rabbit Gallery website landing page.
- B. The White Rabbit Gallery has issued an expression of interest for interested artists and designers to submit a digital artwork for inclusion in the WRG Digital Call-Out.
- C. The Artist has submitted an application and the Artist's artwork has been selected for inclusion in the WRG Digital Call-Out.
- D. The White Rabbit Gallery selected the Artist's submission and agreed to publish the Artist's work online for the WRG Digital Commission.
- E. The Artist has agreed to licence the artwork to the White Rabbit Gallery for the WRG Digital Call-Out on the terms and conditions set out in this Agreement.

OPERATIVE PART:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires:

Agreement means this document and all schedules, attachments and annexures to it.

Artwork means the artwork created by the Artist described in Item 5 of the Schedule.

WRG Digital Call-Out means the bi-annual program of new digital artwork for the White Rabbit Gallery's website and digital channels that are produced and curated by the White Rabbit Gallery and Spring in Alaska.

WRG Digital Archive means the publicly accessible online location in which the Artwork is stored by the White Rabbit Gallery, along with other artworks, and made available for third parties to view.

Artwork Deliverables means the documentation, files and other material relating to the Artwork and the Artist to be provided by the Artist detailed in Item 7 of the Schedule.

Artist Fee means the fee payable by the White Rabbit Gallery as set out in Item 8(a) of the Schedule.

Commencement Date means the date specified in Item 4(a) of the Schedule or, if this is not specified, the date on which this Agreement is signed by the White Rabbit Gallery's authorised officer.

End Date means the date specified in Item 4(b) of the Schedule 1.

GST means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Landing Page means a web page which serves as the entry point for a website or a particular section of a website.

Indigenous Cultural and Intellectual Property (ICIP) Rights means the rights of Australian Aboriginal and Torres Strait Islander peoples to protect their traditional arts and culture and includes, but is not limited to, rights to protect traditional knowledge and sacred cultural material, ensure traditional laws and customary obligations are respected, full and proper attribution or naming of the community connected with the ICIP, and prevent insulting, offensive and misleading uses of ICIP.

Intellectual Property Rights means all industrial and intellectual property rights throughout the world, present or future including copyright in sketches, plans, maps, drawings, reports, computer programs, data bases, models and any designs, trademarks or other intellectual property rights but does not include ICIP Rights.

Moral Rights means all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by statute anywhere in the world.

Permitted Use means the uses of the Artwork and Artwork Deliverables for the purposes detailed in Item 6 of the Schedule.

- 1.2 The Interpretation Act 1987 (NSW) will apply in the interpretation of this Agreement.

2 ARTWORK AND ARTWORK DELIVERABLES

- 2.1 The Artist agrees to licence the Artwork and Artwork Deliverables to the White Rabbit Gallery for the Permitted Use on the terms of this Agreement.
- 2.2 The Artist must provide the Artwork Deliverables to the White Rabbit Gallery within the timeframe specified by the White Rabbit Gallery.
- 2.3 The Artist must ensure the Artwork Deliverables meet all technical specifications advised to the Artist by the White Rabbit Gallery.
- 2.4 Where the White Rabbit Gallery determines that the Artwork Deliverables, in whole or in part, do not meet the terms of this Agreement:
- (a) the White Rabbit Gallery is under no obligation to accept the Artwork Deliverables; and
 - (b) the Artist must revise the Artwork Deliverables, to meet the terms of this Agreement.

3 ARTIST FEE & GST

- 3.1 Subject to:
- (a) the Artist satisfactorily performing its obligations under this Agreement; and
 - (b) receipt of a valid tax invoice from the Artist; the White Rabbit Gallery will pay the Artist the Artist Fee in accordance with the payment schedule set out in Item 8(b) of the Schedule.
- 3.2 If one party (Supplying Party) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (Receiving Party) must also pay an amount (GST Amount) equal to the GST payable in respect of that supply.
- 3.3 Subject to first receiving a tax invoice or adjustment note as appropriate, the Receiving Party must pay the GST Amount when it is liable to provide the consideration.
- 3.4 The Artist will be required to verify their bank details through the White Rabbit Gallery payment verification service, Eftsure, prior to payment. White Rabbit Gallery Finance will send an introduction email to the Artist with instructions. This process must be completed prior to payment.

- 3.5** If the Artist does not have an ABN an ATO Statement by Supplier must be completed if one of the criteria applies. If this is not applicable, the White Rabbit Gallery will be required to withhold 47% of the payment and remit to the ATO.
- 3.6** If one party must indemnify or reimburse another party (Payee) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit but will be increased if the payment is consideration for a taxable supply.
- 3.7** If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.

4 USES OF ARTWORK

- 4.1** The White Rabbit Gallery will only use the Artwork for the Permitted Use and the licence set out in clause 6.3.
- 4.2** The White Rabbit Gallery will not sell the Artwork nor act as an agent on the Artist's behalf.
- 4.3** If the White Rabbit Gallery receives any enquiries about use of the Artwork beyond the scope of the Program, the White Rabbit Gallery will notify the Artist and, subject to the Artist's consent, provide your contact details to the interested party.
- 4.4** The Artist will be attributed as the creator of the Artwork on the WRG Digital Archive on which the Artwork is uploaded with an artist credit consisting of: artist(s) name(s), title of artwork, year of artwork (if desired), and medium of Artwork (if desired), a biography of the Artist, Artist contact details (if desired) and followed by a link to the Artists webpage (if desired).
- 4.5** The Artist acknowledges that:
- (a) use of the Artwork on the WRG Landing Page is uploaded by website developers Spring in Alaska and the White Rabbit Gallery has no control over the installation and maintenance of the Artwork;
 - (b) the Artwork may be modified or adapted by the developer to fit the Landing Page and the Artist may be included in this modification process;
 - (c) where the Artwork is used on the Landing Page, it will be displayed on an active website and/or in the public domain and will be exposed to visitors of the world wide web; and
 - (d) where the Artwork is used on the Landing Page, parts of it may be obscured by pop-ups, titles, headings, icons and drop-down menus.

5 WRG DIGITAL ARCHIVE

- 5.1** The White Rabbit Gallery will publish the Artwork, and information about the Artist and the Artwork, in the WRG Digital Archive.
- 5.2** The White Rabbit Gallery will endeavour to consult with the Artist about the content published in the WRG Digital Archive as it relates to the Artist and the Artwork, and the quality of the reproduction of the Artwork in the WRG Digital Archive.
- 5.3** The Artist acknowledges that:
- (a) the White Rabbit Gallery is responsible for the design of, and content in, the WRG Digital Archive;
 - (b) the White Rabbit Gallery may edit any information or text provided by the Artist prior to its publication in the WRG Digital Archive;

(c) the White Rabbit Gallery has the final determination over the appearance of, design of, and material contained within the WRG Digital Archive; and

(d) the WRG Digital Archive is publicly accessible, and the White Rabbit Gallery has no control over third parties accessing, downloading, copying or using material obtained from the WRG Digital Archive.

- 5.4 The White Rabbit Gallery will remove the Artwork from the Landing Page in accordance with clause 8.
- 5.5 The White Rabbit Gallery will keep the Artwork on the WRG Digital Archive indefinitely.
- 5.6 Removal of the Artwork from the Landing Page will not impact or restrict the White Rabbit Gallery's use of the Artwork for any other aspects of the Permitted Use.
- 5.7 The White Rabbit Gallery has the authority to disable the WRG Digital Archive, at any time.

6 INTELLECTUAL PROPERTY & MORAL RIGHTS

6.1 The Artist warrants that:

- (a) the Artist has the authority to enter into this Agreement;
- (b) the Artwork is an original work;
- (c) the Artist is the owner of all copyright in the Artwork and the Artwork Deliverables or has obtained all necessary approvals and consents to permit the use of the Artwork contemplated by this Agreement, including those required for the use of any ICIP.

6.2 The White Rabbit Gallery acknowledges that:

- (a) the Intellectual Property Rights in the Artwork and the Artwork Deliverables remain the Artist's property at all times; and
- (b) nothing in this Agreement, or in the use of the Artwork under or in relation to this Agreement, affects the ownership of the ICIP and ICIP Rights in the Artwork.

6.3 The Artist grants the White Rabbit Gallery a perpetual, worldwide, irrevocable, royalty free and nonexclusive licence to use, reproduce and communicate to the public the Artwork (or any part of it) and the Artwork Deliverables for the Permitted Use together with the following additional rights associated with the Permitted Use:

- (a) to modify or adapt the Artwork and Artwork Deliverables for the Call-Out and the Permitted Use;
- (b) publicity and promotion of the Artwork and the Call-Out;
- (c) to reproduce the Artwork and Artwork Deliverables in White Rabbit Gallery reports and publications, on the White Rabbit Gallery's website, print media, social media or other promotional publications;
- (d) to reproduce the Artwork and Artwork Deliverables for White Rabbit Gallery displays, documentaries and exhibitions; and
- (e) to retain a copy of the Artwork and Artwork Deliverables for non-commercial archival purposes.

6.4 The White Rabbit Gallery will:

- (a) respect any ICIP and ICIP Rights in the Artwork and Artwork Deliverables; and
- (b) not use the Artwork in a materially different context, or edit, enhance, distort or alter the Artwork in a way, that would objectively adversely affect the ICIP or owners of the ICIP Rights in the Artwork; and

- 6.5** The White Rabbit Gallery will use its best endeavours to ensure the Artist is acknowledged in any publication of the Artwork by the White Rabbit Gallery. However, in the event of the White Rabbit Gallery's error, act or omission, the Artist agrees that the Artist will not hold the White Rabbit Gallery liable where the Artist has not been properly identified, is incorrectly attributed, or the Artwork is altered or otherwise dealt with in a way that may otherwise constitute an infringement of the Artist's Moral Rights.

7 PUBLICITY

- 7.1** The Artist must not issue any media release or public communications, including social media posts, about the Artwork or the Artist's participation in the WRG Digital Call-Out without the White Rabbit Gallery's prior written consent.
- 7.2** The Artist must, at the White Rabbit Gallery's direction, acting reasonably, attend and participate in media events relating to the Artwork or the WRG Digital Call-Out during the Term.
- 7.3** The Artist acknowledges that the Artwork, when used on White Rabbit Gallery Landing Page and WRG Digital Archive, will be displayed in the public domain and the Artist acknowledges that any person may take photos or recordings of the Artwork over which the White Rabbit Gallery has no control.
- 7.4** The Artist agrees that the White Rabbit Gallery may use any recording or photo of the Artwork (in whole or part) in any media format to promote the Artwork or the WRG Digital Call-Out. No additional fee is payable by the White Rabbit Gallery for these rights.

8 WITHDRAWAL OF ARTWORK

- 8.1** The White Rabbit Gallery may withdraw the Artwork from the WRG Digital Archive at any time at its discretion. Where the White Rabbit Gallery exercises this discretion, the White Rabbit Gallery will notify you of the reasons for removal of the Artwork.
- 8.2** The Artist may request removal of the Artwork from the WRG Digital Archive at any time in writing, which must set out the reasons for the requested removal.
- 8.3** Any decision to remove the Artwork from the WRG Digital Archive will be made by the White Rabbit Gallery in its absolute discretion.

9 CONFIDENTIALITY

- 9.1** The Artist acknowledges and agrees that the terms of this Agreement are confidential.
- 9.2** The Artist must not disclose to any person any confidential information disclosed under this Agreement, other than that which has become known in the public domain or unless the Artist is compelled by law to do so.
- 9.3** Prior to any disclosure under clause 9.2, the consent of the White Rabbit Gallery must be obtained.

10 DISPUTES

- 10.1** If a dispute arises between the parties about this Agreement then the party who raises the dispute must notify the other party of the dispute in writing.
- 10.2** The parties must meet and take all reasonable steps to resolve such dispute by negotiation within 14 days of notice received under clause 10.1.
- 10.3** If the dispute is not resolved under clause 10.2, then the dispute must be referred to mediation before the commencement of any legal proceedings about the dispute.
- 10.4** If there is a dispute, the parties must continue to perform their obligations under this Agreement.

11 PERSONAL ENGAGEMENT

- 11.1** This Agreement is personal and cannot be assigned, transferred or sub-contracted by the Artist to another person without the White Rabbit Gallery's written consent.
- 11.2** Nothing in this Agreement creates any relationship of partnership or employment between the parties.

12 RELEASE & INDEMNITY

- 12.1** To the extent permitted by law, the Artist releases and indemnifies the White Rabbit Gallery from any losses, claims, damages, or other actions arising out of or in connection with:
- (a) loss of the Artist's reputation;
 - (b) breach of Intellectual Property Rights and/or Moral Rights;
 - (c) use of the Artwork by any developer or other third party; and
 - (d) breach of this Agreement, except to the extent that the White Rabbit Gallery's negligent act or omission contributed to the losses, claims, damages, or other actions.

13 TERM AND TERMINATION

- 13.1** This Agreement will begin on the Commencement Date and end on the earlier of the End Date or termination under clause 13.2.
- 13.2** The White Rabbit Gallery may terminate this Agreement by notice in writing:
- (a) at its sole convenience and absolute discretion for whatever reason;
 - (b) if the Artist is in breach of this Agreement.
- 13.3** If this Agreement is terminated pursuant to clause 13.2(a), the White Rabbit Gallery will pay the Artist the unpaid portion of the Artist Fee up to the stage of work requested by the White Rabbit Gallery prior to the date of termination. The Artist is not entitled to any other payment or compensation in connection with the termination.
- 13.4** If this Agreement is terminated pursuant to clause 13.2(b), the Artist must refund to the White Rabbit Gallery that portion of the Artist Fee paid to the Artist by the White Rabbit Gallery.
- 13.5** The Artist may terminate this Agreement by giving written notice to the White Rabbit Gallery if the White Rabbit Gallery fails to pay the Artist Fee within 90 days of the date when payment is due.
- 13.6** Termination of this Agreement will not affect any rights or remedies which either party may have under this Agreement or at law. The following clauses survive termination or expiry of this Agreement: 1 (Interpretation), 6 (Intellectual Property & Moral Rights), 9 (Confidentiality), 10 (Disputes), 12 (Release & Indemnity), and 14 (General).

14 GENERAL

- 14.1** This Agreement contains the entire agreement between the parties and any previous negotiations, agreements, representations or warranties about the subject matter of this Agreement, and any purchase order terms issued in relation to the Agreement, are of no effect.
- 14.2** This Agreement may only be varied in writing signed by all parties.
- 14.3** A notice, consent, demand or other communication under this Agreement is only effective if it is in writing and emailed, posted or delivered to the address of the recipient shown in Items 2 and 3 of the Schedule.

- 14.4** This Agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under or relating to this Agreement.
- 14.5** The invalidity, illegality or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provisions.
- 14.6** The parties acknowledge and agree to this Agreement being executed electronically, and in counterparts, in accordance with the Electronic Transactions Act 2000 (NSW).

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SCHEDULE

Item	Name	Description
Item 1	Date of Agreement	<u>insert date here</u>
Item 2	Artist	<u>Legal Name:</u> <u>ABN:</u> <u>Street Address:</u> <u>Contact Person:</u> <u>Phone:</u> <u>Email:</u>
Item 3	White Rabbit Gallery	<u>Legal Name:</u> Business Name: White Rabbit Gallery Entity Name: The Trustee for Dangrove Trust <u>ABN:</u> 59 475 464 712 <u>Street Address:</u> 30 Balfour Street, Sydney, NSW, 2008, Australia, <u>Contact Person:</u> Hannah McKellar <u>Phone:</u> (02) 9137 2774 <u>Email:</u> hmckellar@whiterabbitcollection.org
Item 4	(a) Commencement Date (b) End Date	(a) Date of Agreement per Item 1. (b) <u>insert date here</u>
Item 5	Artwork	<u>insert details of artwork here</u>
Item 6	Permitted Use	Inclusion of the Artwork on the White Rabbit Gallery Website Landing Page. Inclusion of the Artwork in the WRG Digital Archive. Use of the Artwork by the White Rabbit Gallery for promotion and publicity of the Artwork and WRG Digital Call-Out. Use of the Artwork in White Rabbit Gallery reports and publications, on the White Rabbit Gallery's website, print media, social media and other promotional publications. Use of the Artwork in White Rabbit Gallery displays, documentaries and exhibitions. Use of the Artwork for non-commercial archival purposes.
Item 7	Artwork Deliverables	Active online link to Artwork. Digital copy of the Artwork. Up to 3 Reel format (1080 by 1920 px) clips of Artwork. Title and description of the Artwork. Method and materials of the Artwork Recent photograph of the Artist. Preferred Name of Artist.

		Pronouns of Artist. Website Link, Social Media Link and Email of Artist Biography of the Artist. Reproduction-quality images of the Artist's earlier works, if required by the White Rabbit Gallery.
Item 8	(a) Artist Fee (b) Payment Schedule	(a) \$2,000 plus GST (if applicable). (b) Within 14 days of the White Rabbit Gallery receiving and accepting of the Artwork Deliverables.

Executed as an Agreement by:

**Signed for and on behalf of THE WHITE
RABBIT GALLERY** (ABN 59 475 464 712) by
its authorised representative in the presence
of:

Signature of witness

Electronic signature of:

Name of witness

Date signed

Signature of authorised representative

Electronic signature of:

Name of authorised representative

Title of authorised representative

Affixed by me on:

Date signed

**Signed by [INSERT LEGAL NAME OF
PERSON]**
(ABN [INSERT ABN]) in the presence of:

Signature of witness

Electronic signature of:

Name of witness

Affixed by me on:

Date signed

Signature of Artist

Electronic signature of:

Name of Artist

Affixed by me on:

Date signed

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the
Electronic Transactions Act 2000 (NSW).