



**“Referral Partner Referred User”** means a user who has clicked through to the Company Website;

**2. Enrolment in the Referral Partner Programme**

1. By entering into this Agreement, the Referral Partner agrees to enrol in the Referral Programme, subject to the terms and conditions of this Agreement.
2. The date of this Agreement shall be the Effective Date.
3. This Agreement shall be non-exclusive and shall not restrict or prevent the Company from entering into similar or different arrangements with third parties.

**3. The Company’s Obligations**

1. The Company shall be responsible for operating and maintaining the Company Website.
2. The Company shall create, operate, and maintain the Referral Landing Page.
3. The Company reserves the right to change the name of the Company Website at any time without notice.
4. The Company shall be responsible for collation of Referral Partner Referred User sales on a monthly basis and reporting directly to the Referral Partner, as per Section 5 Referral Partner Reports.

**4. Referral Partner’s Obligations**

1. The Referral Partner shall use all reasonable endeavours to market and promote the Company Website and the Company’s goods and services in order to generate the maximum number of Completed Sales.
2. The Referral Partner shall comply with all applicable laws and regulations with respect to its business and to this Agreement.
3. The Referral Partner agrees to the Gallery raising a monthly self-billing invoice, upon receipt of a signed Self Billing Agreement between both parties (to be supplied).
4. The Referral Partner shall have no authority to legally bind the Company with respect to Referral Partner Referred Users, other users, or any other party. The Referral Partner shall not be appointed an agent of the Company for any purposes. The Referral Partner shall not make any representation or commitment about or on behalf of the Company, the Company Website, or the Company’s goods and services.

**5. Referral Partner Reports**

Within 5 days after the end of each calendar month, the Company shall provide to the Referral Partner a report setting out the following data for that calendar month:

1. The number of qualifying Completed Sales, (as set out in sub-Clause 6.3.1 and 6.3.2) including a statement of the sums due to the Referral Partner as set out below in Clause 6.

**6. Commission and Payment**

1. The Company shall pay to the Referral Partner Commission at the rates set out in sub-Clause 6.2 for each qualifying Completed Sale.
2. Commission shall be calculated on the following basis:

<b>Qualifying Completed Sales</b>	<b>Rate of Commission</b>
All qualifying Retail and Commercial Sales up to £5,000 (product sales price only, VAT (if applicable), shipping and credit card charges excluded) made by the Referral Partner	15%
Within each calendar month, when qualifying sales reach between £5,001 - £7,500, qualifies for	20%
Within each calendar month, when qualifying sales reach between £7,501 - £10,000, qualifies for	25%
Qualifying sales over £10,000 per calendar month, qualifies for	30%
<b>Qualifying Sales include:</b> All original artwork by Alli Cullimore All digital prints by Alli Cullimore Commission sales arranged by the Referral Partner	

3. The proceeds of any sale shall be held in trust for the benefit of the Referral Partner by the Gallery. Payment will be made to the Referral Partner within the 1st week of the new month subject to the Referral Partner's choice of payment method. The Referral Partner will receive payment in either a Marks and Spencer E-Gift Card or direct to their nominated bank account under the following conditions:
  - 6.3.1 Retail Purchasers  
Retail purchasers pay in full on placement of their order. Once they have received their artwork or product, they have 14 days to inform the Gallery of their intent to return their order. If no contact is made within the 14 day time period, the Referral Partner receives payment at the end of the given month after the expiration of the 14 day return period. Commissions may carry over into the following month. If the purchaser return their goods, no Commission is payable to the Referral Partner.
  - 6.3.2 Commercial Purchasers  
Commercial purchasers pay a 50% deposit on confirmation of their order, then the remaining payment is to be made within 7 days of receiving their goods.  
  
Once they have received their artwork or product, they have 14 days to inform the Gallery of their intent to return their order. If no contact is made within the 14 day time period, the Referral Partner receives payment at the end of the given month after the expiration of the 14 day return period and only after full payment has been received from the purchaser.
  - 6.3.3 Commissions may carry over into the following month/s dependent on speed of customer payments and returns. If the purchaser returns their goods, no Commission is payable to the Referral Partner.
  - 6.3.4 Payment made by Marks & Spencer E-Gift cards will be subject to either rounding up or rounding down to full GBP.
3. Commission shall be payable only on actual receipts, not on an accruals basis. If the Company does not receive revenue on a Completed Sale, no Commission shall be payable to the Referral Partner.
4. All sums payable shall be exclusive of VAT. If VAT is chargeable, it shall be paid in addition.
5. The Referral Partner shall immediately notify the Company if its contact details or address details change during the Term of this Agreement and shall complete any and all forms required by HM Revenue & Customs and any other applicable public authority with respect to its activities under this Agreement.
6. In the event of any refunds issued for any reason including, but not limited to fraud and where

such refunds are not incurred through any fault of the Company's, the Referral Partner may be contacted to arrange for the repayment of any related Commission.

## 8. Intellectual Property Rights

1. The Company hereby grants to the Referral Partner a non-exclusive, non-transferrable, royalty free licence to use the Company's trade marks and any and all other materials provided by the Company to the Referral Partner to the extent required to establish links, in the form of Referral Partner Link Pages, to the Company Website and to perform the Referral Partner's obligations under this Agreement.
2. The Referral Partner hereby grants to the Company a non-exclusive, non-transferrable, royalty free licence to use the Referral Partner's trade marks and any and all other materials to the extent required to operate the Referral Partner Programme and to perform the Company's obligations under this Agreement.
3. The Referral Partner acknowledges and agrees that the Company (and its licensors, as applicable) own all intellectual property rights in the Company Website, any materials provided by the Company, and the Company's goods and services. Except as expressly stated herein, this Agreement shall not grant the Referral Partner any rights to or in any copyrights, patents, database rights, trade marks (registered or unregistered), trade names, trade secrets, or any other rights or licences belonging to the Company.
4. The Company acknowledges and agrees that the Referral Partner (and its licensors, as applicable) own all intellectual property rights in the Referral Partner Website and any materials provided by the Referral Partner. Except as expressly stated herein, this Agreement shall not grant the Company any rights to or in any copyrights, patents, database rights, trade marks (registered or unregistered), trade names, trade secrets, or any other rights or licences belonging to the Referral Partner.

## 9. Confidentiality

1. Except as provided by sub-Clause 9.2 or as authorised in writing by the other Party, each Party shall, at all times during the continuance of this Agreement and after its expiry or termination:
  1. keep confidential all Confidential Information;
  2. not disclose any Confidential Information to any other party;
  3. not use any Confidential Information for any purpose other than as contemplated by and subject to this Agreement;
  4. not make any copies of, record in any way or part with possession of any Confidential Information; and
  5. ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 9.1.1 to 9.1.4 above.
2. Either Party may:
  1. disclose any Confidential Information to:
    - a) any sub-contractor or supplier of that Party;
    - b) any governmental or other authority or regulatory body; or
    - c) any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;to such extent only as is necessary for the purposes contemplated by this Agreement, or as required by law. In each case that Party shall first inform the person, party, or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 9.2.1(b) or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 9, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
  2. use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

3. The provisions of this Clause 9 shall continue in force in accordance with their terms, notwithstanding the termination or expiry of this Agreement for any reason.

#### 10. **Data Protection**

1. Each Party shall at all times, and at its own expense, ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time with respect to the use of personal data, and shall assist the other Party in complying with the same.
2. The legislation and regulatory requirements referred to in sub-Clause 10.1 include, but are not limited to, the Data Protection Act 2018 and any successor legislation, the EU General Data Protection Regulation (2016/679) ("GDPR") for as long as and to the extent that EU law has legal effect in the UK, any UK legislation enacted as a successor to the GDPR, and any other directly applicable EU legislation relating to privacy and data protection (including successor UK legislation).

#### 11. **Indemnity**

1. Subject to sub-Clause 11.3, the Referral Partner shall indemnify the Company against all liabilities, costs, expenses, damages, and losses (including, but not limited to, direct or consequential loss, loss of profit, loss of reputation, and any and all interest, penalties, and legal costs (calculated on a full indemnity basis) and all other reasonable costs and expenses) suffered or incurred by the Company arising out of or in connection with the Referral Partner Website or the marketing or sale of goods or services.
2. Subject to sub-Clause 11.3, the Company shall indemnify the Referral Partner against all liabilities, costs, expenses, damages, and losses (including, but not limited to, direct or consequential loss, loss of profit, loss of reputation, and any and all interest, penalties, and legal costs (calculated on a full indemnity basis) and all other reasonable costs and expenses) suffered or incurred by the Referral Partner arising out of or in connection with the Company Website or the marketing or sale of goods or services on the Company Website.
3. The indemnities set out in sub-Clauses 11.1 and 11.2 shall apply provided that:
  1. The indemnifying Party is given prompt notice of any such claim;
  2. The indemnified Party provides reasonable co-operation to the indemnifying Party in the conduct of such claim at the indemnified Party's expense; and
  3. The Indemnifying Party is given the sole authority to defend or settle the claim.

#### 12. **Liability**

1. Neither Party shall be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, revenue, goodwill, or anticipated savings.
2. Neither Party shall be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
  1. Any loss arising out of the lawful termination of this Agreement or any decision not to renew its Term; or
  2. Any loss that is an indirect or secondary consequence of any act or omission of the Party in question.
3. Nothing in this Agreement shall limit or exclude the liability of either Party for death or personal injury caused by its negligence or the negligence of its directors, officers, employees, agents, sub-contractors or advisers; fraud or fraudulent misrepresentation; liability under the indemnity provisions set out above in Clause 11; or for any other matter in respect of which it would be unlawful to exclude or restrict liability.
4. As per Social Media Clause 13.5 - The Referral Partner agrees to indemnify the Gallery from liability due to the Referral Partner's written word, content, images or spoken word on or off social media.

#### 13. **Social Media**

1. The Gallery agrees that the Referral Partner can market all artworks/goods under the control of the Gallery on any social media channels of the Referral Partner's choice.

2. The Referral Partner agrees to behave in a professional and businesslike manner at all times on and off social media.
3. No derogatory or inflammatory comments regarding the artworks/goods or the Gallery as a whole are permitted.
4. The Gallery does not accept content that is obscene in any way, pornographic, indecent, inflammatory, defamatory or racist to any person or group of people.
5. The Referral Partner agrees to indemnify the Gallery from liability due to the Referral Partner's written word, content, images or spoken word on or off social media.
6. The Referral Partner agrees to the Gallery's social media clause above on signing this Agreement.

**13. Term and Termination**

1. This Agreement shall come into force on the Effective Date and shall continue indefinitely from that date, subject to the provisions of this Clause 13.
2. The Company may terminate this Agreement on notice at any time if it discontinues or withdraws (in whole or in part) the Referral Programme. The Company shall use reasonable endeavours to provide the Referral Partner with as much notice as is reasonably possible. Such termination shall be without any liability to the Referral Partner.
3. Without prejudice to any other rights or remedies to which either Party may be entitled, either Party may terminate this Agreement (without liability to the other) if:
  1. any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 30 days of the due date for payment;
  2. the other Party commits any other material breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 30 days after being given written notice giving full particulars of the breach and requiring it to be remedied;
  3. an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
  4. the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  5. the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);
  6. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
  7. the other Party ceases, or threatens to cease, to carry on business; or
  8. control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 13, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
4. For the purposes of sub-Clause 13.5.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
5. The rights to terminate this Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

**14. Effects of Termination**

Upon the termination of this Agreement for any reason:

1. any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;

2. all licences and benefits granted under this Agreement shall terminate immediately;
3. each Party shall return to the other Party (or destroy or otherwise dispose of, as requested) and make no further use of any materials, property, or other items (and any and all copies thereof) belonging to the other Party;
4. each Party shall (except to the extent referred to in Clause 9) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information;
5. all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain in full force and effect; and
6. termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which exist at or before the date of termination.

15. **Force Majeure**

1. Neither Party shall be liable for any failure or delay in performing their obligations under this Agreement where such failure or delay results from any cause that is beyond the reasonable control of that Party.

16. **No Waiver**

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

17. **Further Assurance**

Each Party shall execute and do all such further deeds, documents, and things as may be necessary to carry the provisions of this Agreement into full force and effect.

18. **Costs**

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution, and carrying into effect of this Agreement.

19. **Assignment and Other Dealings**

1. The Referral Partner shall not assign, mortgage, charge (otherwise than by floating charge), declare a trust over, or sub-licence or otherwise delegate any of its rights under this Agreement, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the Company, such consent not to be unreasonably withheld.
2. The Company may assign, mortgage, charge, declare a trust over, or sub-licence or otherwise delegate any of its rights under this Agreement, or sub-contract or otherwise delegate any of its obligations hereunder.

20. **Relationship of the Parties**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

21. **Third Party Rights**

No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

22. **Entire Agreement**

- 1. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 2. Each Party shall acknowledge that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

23. **Severance**

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid, or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

24. **Law and Jurisdiction**

- 1. This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 2. Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales

SIGNED for and on behalf of the Company by:

Allison Pearce - Director

\_\_\_\_\_  
Authorised Signature

Date: \_\_\_\_\_

SIGNED for and on behalf of the Referral Partner by:

Name and Title of person signing for the Referral Partner \_\_\_\_\_

\_\_\_\_\_  
Authorised Signature

Date: \_\_\_\_\_