**ARTISFY PLATFORM CONTRACT**

**DEFINITIONS**

1. **AMENDMENT** shall mean an agreement that changes any term or condition hereof, signed by both Artist and Buyer.
2. **ARTISFY** shall mean Artisfy, LLC a Massachusetts limited liability company.
3. **ARTISFY PLATFORM** shall mean the ARTISFY system that allows BUYERS to identify, connect and engage in transactions with ARTISTS.
4. **ARTIST** shall mean that individual or entity performing services under this CONTRACT, as registered with the ARTISFY PLATFORM, and shall include all employees, SUBCONTRACTORS, and/or agents of the ARTIST.
5. **BUYER** shall mean the individual or entity purchasing WORK, as that entity is registered with the ARTISFY PLATFORM.
6. **CONTRACT** shall mean this CONTRACT for Commissioning of Artwork.
7. **DESIGN** shall mean the description, specifications for, model of, and/or drawings of the WORK.
8. **PROJECT** shall mean a series of one or more REQUESTs. Each REQUEST is intended to build upon the previous REQUEST(S) in a series. When an ARTIST receives and accepts a new REQUEST through the ARTISFY PLATFORM, such ARTIST is expected to modify the previous REQUEST in the series pursuant to the DESIGN provided by BUYER.
9. **REQUEST** shall mean a request for services for a freelance ARTIST. A REQUEST is created after a BUYER sends an ARTIST a description for an illustration they’d like the ARTIST to create. A REQUEST by a BUYER establishes a clear intent to pay the ARTIST. A REQUEST shall be assumed to be asking for improvements or continuations of a previously completed REQUEST if made under the same PROJECT. All REQUESTs shall be made using the ARTISFY PLATFORM.
10. **SUBCONTRACTOR(S)** shall mean one not in the employment of the ARTIST, who is performing all or part of those services under this CONTRACT under a separate contract with the ARTIST, and who is considered an independent contractor.
11. **WORK** shall mean the work of art to be designed, executed, fabricated, transported, and/or installed under this CONTRACT.

This CONTRACT is made and entered into by and between BUYER, ARTISFY, and ARTIST, each a “party” and together, the “parties”.

The parties, for the consideration, covenants, and conditions hereinafter set forth, do agree as follows:

**1. HIRING OF ARTIST**

BUYER does hereby retain ARTIST to perform the work and services hereinafter described. The ARTIST is an independent contractor and shall furnish all supervision, labor, materials, supplies, equipment or use thereof, travel expenses, and all other incidentals, except as specifically provided below, and shall conduct and complete the WORK in a competent and professional manner.

**2. SCHEDULE**

In the absence of further detail, below, a REQUEST or DESIGN must be completed and delivered within eight (8) calendar days from the date upon which ARTIST accepts the REQUEST or DESIGN electronically through the ARTISFY PLATFORM.

The ARTIST shall commence work upon the date set forth in the ARTISFY PLATFORM, which is the date the ARTIST accepts the REQUEST through the ARTISFY PLATFORM, and shall complete the WORK including all phases under this CONTRACT, as set forth in the REQUEST, ARTISFY PLATFORM or DESIGN, as applicable.

The time for completion may be extended by the joint agreement of ARTIST and BUYER to the extent the ARTIST actually incurs delays in the design, fabrication, delivery and/or installation of the WORK due to circumstances unforeseen by the ARTIST at the time of their agreement to this CONTRACT.

**3. SCOPE OF WORK**

A. Description of Work

The ARTIST shall complete the design of the WORK in substantial conformity with the REQUEST and/or DESIGN for the WORK and perform all tasks as detailed herein below.

In addition or in lieu of REQUESTs made through the ARTISFY PLATFORM, DESIGN and/or REQUESTs may be attached to this CONTRACT as **Attachment A**, and by this reference, incorporated into this CONTRACT as though set forth fully herein.

B. Delivery

ARTIST shall deliver the completed work as set forth in the ARTISFY PLATFORM.

C. Other Obligations

If other obligations are included, other than the DESIGN and/or REQUEST, they should be set forth clearly, in **Attachment A.**

D. Attribution

BUYER shall always attribute ARTIST in any publication of the WORK accompanied by written or spoken editorial content. For the sake of clarity, BUYER is not required to attribute ARTIST in other instances, but is strongly encouraged to do so.

E. Additional Documentation

As reasonably requested by BUYER during the performance of this CONTRACT, or as set forth in the DESIGN or REQUEST, the ARTIST shall prepare and present to the BUYER progress updates.

**4. CHANGES TO WORK PRIOR TO COMPLETION**

A party may request that changes be made to the DESIGN or REQUEST at any point during execution, fabrication, or installation of the WORK. Prior to execution of any significant change to the REQUEST or DESIGN as described in Section 3 and/ or Attachment A, the following procedure shall be followed:

A. The party requesting the change(s) shall present the proposed changes to the other party for further review and approval, through the ARTISFY PLATFORM. Upon a formal REQUEST by BUYER, ARTIST will provide, in a reasonably timely fashion, a detailed description of any significant changes in the concept, scope, dimensions, materials, and/or location of the WORK, or any change that will alter delivery timeframes, installation scheduling, site preparation, or the WORK itself. FOR THE AVOIDANCE OF DOUBT, ARTIST SHALL BE COMPENSATED FOR THE TIME NECESSARY TO PROVIDE THE FOREGOING INFORMATION.

B. When the ARTIST and BUYER agree with the changes to the WORK written approval in the form of an AMENDMENT to this CONTRACT shall be issued, through the ARTISFY PLATFORM, stating the approved change(s) and by this reference, incorporated into this CONTRACT as though set forth fully herein.

1. **PAYMENT**

A. Payment for Work Performed

The ARTIST shall be paid by BUYER for all work and/or services related to this CONTRACT. ARTISFY shall be paid a percentage of the ARTIST rate for the provision of the ARTISFY PLATFORM, and shall make all transfers from BUYER’s account to ARTIST’s account.

B. Payments to ARTISFY

BUYER agrees to pay ARTISFY the ARTIST’s hourly fee and ARTISFY’s fee immediately upon the ARTIST’s acceptance of the BUYER’s REQUEST through the ARTISFY PLATFORM. ARTISFY charges a fee of fifteen percent (15%) of the agreed upon amount of each REQUEST per REQUEST, which is included in ARTIST’S hourly rates as displayed on the ARTISFY PLATFORM.

 C. Payments to ARTIST

ARTISFY shall pay the ARTIST its hourly fee, less ARTISFY’s fee, within fourteen (14) days of the delivery of the WORK required by a REQUEST and/or DESIGN.

C. Taxes

ARTIST and BUYER are responsible for all applicable taxes, including state sales/use and excise taxes, local and federal taxes, which may be due from them as a result of this CONTRACT.

D. Billing Procedures

All billing and invoicing shall take place using the ARTISFY PLATFORM.

**6. ARTIST AS INDEPENDENT CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this CONTRACT. The ARTIST performing under this CONTRACT is not an employee, SUBCONTRACTOR, or agent of BUYER or ARTISFY. The ARTIST will not hold himself/herself out as nor claim to be an officer or employee of BUYER or ARTISFY, nor will the ARTIST make any claim of right, privilege, or benefit which would accrue to an employee under law. Conduct and control of the work completed under this CONTRACT will be solely with the ARTIST. The ARTIST shall execute the WORK at a location determined by the ARTIST.

**7. INTELLECTUAL PROPERTY RIGHTS**

 A. Inalienable ARTIST Rights

ARTIST retains the following rights to the WORKS produced via the ARTISFY PLATFORM and this CONTRACT:

1. ARTIST may continue to work, improve upon and create derivative works of a WORK subsequent to the receipt, through the ARTISFY PLATFORM, of REQUEST(s) to do so from the initial BUYER;
2. ARTIST may display, publish, and distribute full-resolution samples of the WORK for promotional and marketing needs;
3. ARTIST may include the WORK as part of an artbook that they market and sell in order to show off their skill, style, biography, and/or body of work;
4. ARTIST may sell the WORK or derivatives thereof (in any format) to interested parties as a canvas, poster, art print, or framed artwork.
5. For the avoidance of doubt, ARTIST shall at all times retain all rights related to their unique “style” and manner of creation, and future works in ARTIST’s unique style shall not be deemed derivative works.
6. For the avoidance of doubt, ARTIST shall retain ONLY the rights in this Section 7, A for the first three (3) years from the delivery of a WORK.
7. For the avoidance of doubt, ARTIST shall always retain the rights in this Section 7, A unless the ARTIST and BUYER formally amend this contract.

B. Time-dependent ARTIST Rights

 After three (3) years from the delivery of a WORK, and in the absence of a BUYER’s purchase of all related rights, the ARTIST may utilize such WORK at ARTIST’s discretion. For the sake of clarity, at this point, ARTIST shall have all the rights that had been granted to BUYER over the preceding three (3) years.

 C. BUYER Rights – Basic

In perpetuity from delivery of a WORK, BUYER is granted a world-wide, transferrable license to the WORK.

D. BUYER Rights – Purchasable

At any time during a PROJECT, and prior to the expiration of three (3) years from the completion of a PROJECT, the BUYER may purchase the following rights to the WORK from the ARTIST by paying a fee equal to thirty percent (30%) of the total cost of the subject PROJECT:

1. Upon receipt of a payment in the amount specified, minus a small fee from ARTISFY to cover credit card fees:
	1. ARTIST relinquishes all rights set forth in Section 7, B, and the copyright shall transfer to BUYER; and
	2. ARTIST shall retain all rights set forth in Section 7, A.

E. ARTISFY Rights

Both ARTIST and BUYER acknowledge that ARTISFY shall at all times retain a perpetual, worldwide, transferrable license to publish, print, employ, advertise, or otherwise utilize the WORK (in lower resolution quality than the original artwork) exclusively in relation to the business of promoting ARTISFY or ARTISFY’s affiliates. Should a BUYER desire to opt out of this clause, such may be accomplished by making a formal request to ARTISFY or through the ARTISFY PLATFORM, and such request will be negotiated between BUYER and ARTISFY.

 F. Pre-existing ARTIST WORK

 Should ARTIST and BUYER decide that certain pre-existing ARTIST intellectual property is to be used in a REQUEST or PROJECT, ARTIST may agree to use, and BUYER may agree to pay for, such pre-existing intellectual property using the mechanics set forth in Section 7, D, above.

**8. REMEDIES**

In the event of any of the following, a BUYER may request and receive a refund for their PROJECT, at ARTISFY’s reasonable discretion:

1. ARTIST does not deliver the WORK within eight (8) calendar days, in completion of a REQUET; or
2. ARTISFY reasonably determines that the ARTIST did not devote the required amount of time to a REQUEST.

In the event that a BUYER receives a refund, the ARTIST is released from any requirement to deliver WORK for such REQUEST, and no rights accrue to BUYER. However, the rights to previous REQUESTs and WORKs shall be unaffected.

In the event that a BUYER withholds payment for the REQUEST, as liquidated damages, such BUYER will be responsible for making payment to include a five percent (5%) penalty and the greater of a) an interest rate of one percent (1%) per month calculated daily, or b) the maximum amount permitted by law. Additionally such BUYER shall pay, on an ongoing basis, all fees, costs and expenses (including but not limited to reasonable fees of counsel) incurred by ARTIST or ARTISFY related to enforcing the obligations set forth herein.

Should ARTISFY withhold payment to an ARTIST for a properly completed REQUEST, ARTISFY shall be responsible for paying interest, at a rate of three percent (3%) per year, calculated monthly.

**9. NONASSIGNABILITY**

Neither this CONTRACT, nor any claim arising from this CONTRACT, shall be transferred or assigned by a party without prior written consent of the other party. Notwithstanding the foregoing, ARTIST’S and CLIENT’s estates, executors or heirs may enforce the terms hereof, and ARTISFY may freely transfer its rights hereunder to an entity that acquires all, or substantially all, of ARTISFY’s assets.

**10. INDEMNIFICATION & LIMITATION OF LIABILITY**

BUYER and ARTIST shall indemnify and hold harmless ARTISFY from any and all claims, costs, damages, or expenses arising out of any issue related hereto.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL ARTISFY’S LIABILITY TO ANY PARTY HEREUNDER EXCEED THE LESSER OF THE FEES PAID TO ARTISFY UNDER THIS CONTRACT OR THE MINIMUM AMOUNT REQUIRED BY LAW.

**11. WARRANTY OF TITLE**

The ARTIST warrants and represents that, upon delivery of the WORK and final payment to the ARTIST, BUYER shall acquire good title to the WORK, and that the WORK shall be free from any and all claims, liens, and charges by any person or entity, including but not limited to any employee, supplier, or SUBCONTRACTOR.

The ARTIST warrants and represents that the WORK is the result of the artistic effort of the ARTIST or disclosed and attributed collaboration, the WORK does not infringe upon any copyright, and that the WORK is unique.

**12. ADDRESSES FOR NOTICES AND DOCUMENTS**

The parties shall use the ARTISFY PLATFORM to deliver notices related to this CONTRACT.

**13. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of the CONTRACT unless stated to be such in writing, signed by authorized representative of both parties.

**14. SEVERABILITY**

The provisions of this CONTRACT are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the CONTRACT.

**15. AMENDMENT**

This CONTRACT may be amended by mutual agreement of the parties. Such AMENDMENTS shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**16. ENTIRE AGREEMENT**

This CONTRACT, including any referenced attachments, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral shall be deemed a part hereof.

**ATTACHMENT A – DESIGN & DETAILED DESCRIPTION OF THE WORK**