

ARTIST & AGENT AGREEMENT FOR SASKATCHEWAN VISUAL ARTISTS

FOR USE WITH COMMERCIAL GALLERIES, DEALERS, AGENTS (REV 2010-05)

Background

In May 2009, the Saskatchewan government passed a new law called *The Arts Professions Act* (the “APA”). The APA will come into force and apply on and after June 1, 2010. The APA serves to recognize artists, including by affirming and recognizing:

- the important contribution of artists to the cultural, social, economic and educational enrichment of Saskatchewan;
- the value of artistic creativity in advancing Saskatchewan’s cultural, social, economic and educational life;
- the valuable contribution of artists to Saskatchewan’s cultural heritage and development; and
- the importance of fair compensation to professional artists for the creation and use of their artistic works.

To achieve these purposes, the APA requires a written agreement whenever a person (called an “engager” in the APA) intends to hire a “professional artist”: (1) to produce an artistic work or production; (2) to present an artistic work or production to the public; or (3) to engage in the circulation or dissemination of artistic works to the public (whether by lease, exchange, deposit, exhibition, publication, publicly presenting or other similar fashion). Under the APA, each contract between a professional artist and an engager must contain certain terms. Further information on *The Arts Professions Act* of Saskatchewan is available from the Government of Saskatchewan online at www.tpcs.gov.sk.ca/arts-professions-act.

The CARFAC Saskatchewan Model Agreements

CARFAC Saskatchewan has always recognized the value of artists entering into written contracts; but CARFAC Saskatchewan also recognizes that artists are not always in a position to develop and maintain a body of contracts that meet all the requirements of the APA. To simplify matters, CARFAC Saskatchewan has worked with its lawyers to develop a set of model agreements that meet all the criteria set out in the APA and are pleased to provide this model agreement for reference.

Please note that CARFAC Saskatchewan prepared each of the foregoing model agreements to address the general requirements for a contract in the circumstances generally described by the title to the agreement. In other words, a model agreement contains only the most basic terms that might arise in the context identified by the title to the agreement. The model agreements are not comprehensive in nature; they do not contemplate anything beyond the most basic model for the relationship in question.

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Questions about the Model Agreements?

Please feel free to contact CARFAC Saskatchewan if you have questions about the General Terms or about the model agreements in general. If we are unable to help you, or if you are looking for legal advice that only a lawyer can provide, CARFAC Saskatchewan will be happy to refer you to one of our recommended lawyers.

Notice and Disclaimer

CARFAC Saskatchewan is hopeful that the model agreements will benefit artists. This introduction and all of the model agreements published or distributed by CARFAC Saskatchewan on its website or otherwise are © CARFAC Saskatchewan. All rights reserved. The model agreements were prepared by CARFAC Saskatchewan with the assistance of McDougall Gauley LLP, Barristers and Solicitors.

The model agreements have been adapted (with permission and under licence) from the work "Artists' Contracts: Agreements for Visual and Media Artists" by Paul Sanderson and Ronald N. Hier, © CARFAC Ontario, 2006. Copies of the book "Artists' Contracts: Agreements for Visual and Media Artists" may be purchased from CARFAC Ontario (www.carfaontario.ca), CARFAC National (www.carfac.ca) or CARFAC Saskatchewan (www.carfac.sk.ca).

This introduction and the model agreements are subject to an express and limited copyright licence. No part of this introduction, nor any model agreement may be reproduced or transmitted in any form or by any means, electronic or mechanical, without the prior written permission of CARFAC Saskatchewan. Notwithstanding this restriction, an authorized user or purchaser of one or more of the model agreements provided by CARFAC Saskatchewan may reproduce any part of the text of such model agreement or agreements without charge for the limited purpose of use in the user's or purchaser's business, personal, or professional practice.

The information contained in this document is intended to provide guidance and advice of a general nature to Saskatchewan artists and related businesses and individuals. Every effort has been made to provide accurate and up-to-date information, however, CARFAC Saskatchewan, CARFAC Ontario and the authors cannot accept liability for errors or omissions.

All artists and the public may access the CARFAC Saskatchewan model agreements to meet the requirements of The Arts Professional Act (Saskatchewan) or otherwise; however, those persons who do so ("you") acknowledge that CARFAC Saskatchewan created the model agreements and the accompanying notes to provide artists and others with information of a general nature only. The model agreements and accompanying notes are not intended as a substitute for professional legal consultation and legal advice in any particular case. CARFAC Saskatchewan is not entitled to, and does not by providing the template model agreements, provide legal advice. CARFAC Saskatchewan cautions you not to rely on any model agreement as professional legal advice.

CARFAC Saskatchewan encourages you to seek detailed legal advice before acting or relying upon any information contained in any model agreement or accompanying notes. While the model agreements and notes are based on information that was accurate and up-to-date as at the date of drafting, the accuracy and currency of any information will change over time. CARFAC Saskatchewan makes no representations whatsoever as to the applicability or suitability of any model agreement or any accompanying notes to any particular person or circumstance. CARFAC Saskatchewan disclaims any and all liability for any reliance by anyone upon any model agreement and the accompanying notes, if any.

You must seek the advice of a lawyer if you have any questions or concerns about the use of any model agreement.

ARTIST & AGENT AGREEMENT

THIS AGREEMENT (this “**Agreement**”) made effective the ___ day of _____, 20___,

BETWEEN:

_____ (the “**Artist**”)

AND:

_____ (the “**Agent**”)

WITNESSES THAT WHEREAS the Artist is the creator and exclusive owner of certain paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, works of artistic craftsmanship, architectural works, digital files and compilations of artistic works (“**Artistic Works**”) and all Intellectual Property Rights therein;

AND WHEREAS the Artist wishes to engage the Agent to act as representative of the Artist to generate commissions, sales, licences or other dispositions of certain Artistic Works on behalf of the Artist (each a “**Sale**”) within the Territory during the Term, and the Agent wishes to accept such engagement as agent for the Artist;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Artist and the Agent (together the “**Parties**” and each a “**Party**”), the Parties agree and covenant as follows:

1. Definitions and Interpretation

1.1 The definitions for words and terms not otherwise defined in the body of this Agreement are found in Schedule “A” attached to this Agreement.

1.2 The general provisions set forth in Schedule “A” are hereby incorporated into and form a part of this Agreement.

2. Scope of Agency

2.1 The Artist hereby engages the Agent, and the Agent accepts engagement, as the Artist’s sole agent within the territory of: _____ (the “**Territory**”).

2.2 The Artist, at the Artist’s expense, shall provide the Agent with samples of the Artistic Works, in a form acceptable to both Parties, and as are described in Schedule “B” attached to this Agreement (the “**Samples**”), within fourteen (14) days of the signing of this Agreement. If the Agent requests further Samples, the Artist shall make a reasonable effort to comply with such request. All Samples are and remain the property of the Artist. The Agent shall return all Samples to the Artist within fourteen (14) days of the termination or expiry of this Agreement.

- 2.3 On Artistic Works commissioned of the Artist by or through the Agent under this Agreement during the Term ("**Commissioned Works**"), the Artist shall pay the Agent a ____ % commission calculated as a percentage of: the total sale price of the Commissioned Work less any applicable taxes and expenses directly incurred by the Artist in connection with the creation of the Commissioned Work.
- 2.4 On Artistic Works other than Commissioned Works, sold by or through the Agent under this Agreement during the Term ("**Speculative Works**"), the Artist shall pay the Agent a ____ % finders fee calculated as a percentage of: the total sale price of the Speculative Work less any applicable taxes and expenses directly incurred by the Artist in connection with the creation of the Speculative Work.
- 2.5 The Agent shall not be entitled to a commission or finders fee on:
- a. Sales made solely by or through the Artist;
 - b. Sales to purchasers outside of the Territory;
 - c. Sales rejected by the Artist;
 - d. Sales made by the Agent where the purchaser for any reason declines to accept the Artistic Work; and
 - e. Sales made by the Agent where the purchaser accepts the Artistic Work but there has been total or partial non-payment of the Sale price.
- 2.6 The Artist may request the return of one or more of the Samples at any time during the Term of this Agreement, and the Agent agrees and covenants to return the requested Samples within ten (10) days of receiving such request.
- 2.7 The Artist shall forward to the Agent receipts for expenses incurred with respect to the creation of Commissioned Works within ten (10) days of the Artist's receipt of such receipts.
- 2.8 The Artist shall forward to the Agent receipts for expenses incurred with respect to the creation of Speculative Works within ten (10) days of the date of Sale of any Speculative Work if the Artist is in possession of such receipts.
- 2.9 Allowable expenses which shall be deducted from the sale price in the calculation of any of the Agent's commissions shall include: _____

 _____.
- 2.10 In determining any amount owed to the Artist in respect of a Sale, the Agent shall not be required to make allowance for any expenses of the Artist for which no receipt has been provided to the Agent.

3. Artist's Control

- 3.1 The Artist has the right to refuse, arbitrarily, any request for a Commissioned Work.
- 3.2 The Artist has the right to limit the uses to which any Commissioned Work may be put.
- 3.3 At all times, including subsequent to the Sale of an Artistic Work, the Artist is entitled to enforce or obtain the benefit of all moral rights associated with the Artistic Works.

4. Agent's Obligations

- 4.1 The Agent shall represent, promote and secure Sales for the Artist in the Territory and negotiate the terms of such Sales.
- 4.2 The Agent is responsible for billing and collecting all amounts owed by a purchaser for Artistic Works sold pursuant to this Agreement. Within fourteen (14) days of receipt of any payment pursuant to a Sale, the Agent shall pay to the Artist the total sale price less any commissions owed to the Agent under this Agreement (the "**Artist Payment**"). Interest on overdue Artist Payments shall accrue and be owed to the Artist at the rate of twelve percent (12%) per year, compounded monthly, until actual payment to the Artist.
- 4.3 The Agent shall collect any applicable sales taxes in connection with a Sale and, to the extent required by law, remit them to the Artist with the proceeds of such Sale. The Agent shall indemnify the Artist for any failure of the Agent to collect and remit taxes.
- 4.4 The Agent shall forward a Statement of Account to the Artist on January 31 and July 31 of each year of the Term detailing, at minimum:
 - a. all Sales for the relevant time period;
 - b. purchaser names;
 - c. sales prices paid;
 - d. taxes collected;
 - e. expenses claimed by the Artist;
 - f. dates payments were received;
 - g. Agent's commissions;
 - h. amounts on which the Agent's commissions were calculated;
 - i. taxes on the Agent's commissions; and
 - j. sums due to the Artist and the Agent.
- 4.5 Upon notice to the Agent, the Agent shall allow the Artist to audit, inspect and take photocopies and extracts of the books and records of the Agent with respect to Sales during regular business hours.
- 4.6 The Agent shall be liable for loss or damage to Samples, Commissioned Works and Speculative Works when not in the possession of the Artist, including during shipping of the Samples, Commissioned Works and Speculative Works.

4.7 The Agent shall provide all-risks insurance for any Artistic Works in possession of the Agent from the time they first come into the Agent's possession until they are delivered to a purchaser or the Artist.

5. Term and Termination

5.1 This Agreement shall be in effect from the date first written above and shall terminate on the ____ day of _____, 20____ (the "Term").

5.2 This Agreement may be renewed within thirty (30) days of the expiration date by mutual agreement of the Parties, in writing.

5.3 Either Party may terminate this Agreement by giving thirty (30) days written notice.

5.4 This Agreement shall terminate automatically and without notice upon:

- a. the death or incapacity of a Party who is an individual;
- b. the dissolution or winding up of a Party who is a corporate body; or
- c. the commencement of bankruptcy proceedings in respect of a Party or the date on which a receiver, custodian, liquidator, sequestrator, monitor, receiver and manager or any other person with similar powers is appointed for a Party or for any substantial part of a Party's property or any substantial part of a Party's property is seized by another person.

5.5 In the case of a breach of a term of this Agreement, the non-breaching Party may terminate, at its sole option, by giving the other Party ten (10) days written notice. If the breach is cured to the satisfaction of the non-breaching Party within the ten (10) day notice period, then this Agreement may continue in force, at the sole discretion of the non-breaching Party.

5.6 Upon termination of this Agreement, the Agent shall return, at the Agent's expense, all Artistic Works (including Samples) in the possession or control of the Agent to the Artist and provide the Artist with a final Statement of Account to the end of the Term.

5.7 If the Agent has not collected an amount owing on any Sale as of the termination date, the Agent shall assign the uncollected account to the Artist and provide all assistance necessary to the Artist to collect the account provided that the Agent shall not be liable to the Artist if the account is not collected. The Artist's obligation to pay the Agent a commission or finders fee with respect to uncollected accounts shall survive the termination or expiry of this Agreement, but any such commission or finders fee shall not become due or payable until such time as the account is actually collected, in full, by the Artist. The Artist may deduct all costs of collection as an expense hereunder.

6. Notice

6.1 Any notice required or permitted to be given under this Agreement will be in writing and may be given by delivering, sending by electronic facsimile transmission or other means of electronic communication capable of producing a printed copy, or sending by prepaid registered mail posted in Canada, the notice to the following address or number (or to such other address or number as either Party may specify by notice in writing to the other Party):

If to Artist, to the Artist at: _____

Facsimile No.: _____; Email Address: _____

If to the Agent, to the Agent at: _____

Facsimile No.: _____; Email Address: _____

- 6.2 Any notice delivered or sent by electronic facsimile transmission or other means of electronic communication on a business day will be deemed conclusively to have been effectively given on the day the notice was delivered, or the transmission was sent successfully to the number or address set out above, as the case may be.
- 6.3 Any notice sent by prepaid registered mail will be deemed conclusively to have been effectively given on the third business day after posting; but if at the time of posting or between the time of posting and the third business day thereafter there is a strike, lockout, or other labour disturbance affecting postal service, then the notice will not be effectively given until actually delivered.

IN WITNESS WHEREOF the Parties have hereunto executed this Agreement as of the date first above written.

X _____
Signature of Artist

ARTIST NAME: _____

X _____
*Signature of Agent or
Authorized Signatory of Agent*

AGENT NAME: _____

[remainder of this page intentionally left blank]

SCHEDULE "A"
Interpretation and General Provisions

A. **Definitions**

When used in the body of this Agreement, the following words and terms shall have the following meanings:

1. **"Intellectual Property Rights"** means any and all existing and future legal protection recognized by law (whether by statute, in equity, at common law or otherwise) anywhere in the world in respect of the Works, including trade secret and confidential information protection, patents, copyright and copyright registration, industrial design registration and trade-marks and trade-mark registrations and other registrations or grants of rights analogous thereto;
2. **"including"**, when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter; and
3. **"person"** shall be construed as a reference to any individual, firm, company, corporation, joint venture, joint-stock company, trust, unincorporated organization, government or state entity or any association or a partnership (whether or not having separate legal personality) or two or more of the foregoing.

B. **General Provisions**

1. The Parties are independent contractors under the Agreement. The Parties are not engaged in a joint venture or partnership or employment relationship.
2. Any approval or consent to be given pursuant to the Agreement or any variation, alteration or waiver of any of the rights and obligations of the Parties under the Agreement must be in writing and signed by both Parties; however, the Artist retains the right to assign monies due to the Artist under the Agreement and to assign the copyright in all Artistic Works without the consent of any other person.
3. If the Artist is an Aboriginal person in Canada, the Parties agree that the protocols respecting the use of Aboriginal symbols or artefacts or matters of importance to Aboriginal peoples have been considered and adhered to by the Parties. The Parties covenant and agree that the Aboriginal protocols do not prevent either Party from entering into the Agreement nor from abiding by the terms and conditions of the Agreement. Any Aboriginal procedures, protocols or conditions applicable to this Agreement are listed and described in detail in Schedule "C" attached to this Agreement.

4. The waiver by a Party of strict compliance or performance of any of the terms and conditions of the Agreement or of any breach hereof on the part of the other Party shall not be held or deemed to be a waiver of any subsequent failure to comply strictly with or perform the same or any other term or condition of the Agreement or of any breach thereof.
5. The Agreement, and any other documents and instruments delivered pursuant to the Agreement, shall be governed by and construed in accordance with the laws of Saskatchewan and the laws of Canada applicable therein.
6. Each Party accepts and attorns to the exclusive jurisdiction of the Courts of Saskatchewan and all courts of appeal therefrom for any and all actions or matters arising out of or otherwise concerning the Agreement, without reference to conflict of laws rules, and the Parties further agree that, in addition to any other manner of service provided for by law, any and all pleadings and other documents, including those of an originating nature, to be served on the other Party, may be served on the Parties in the manner contemplated for notices under the Agreement and the Parties agree that such service shall be deemed for all purposes to be good and sufficient service of such pleading or other document, as the case may be.
7. The Parties agree to use their best efforts to settle any disagreements as to the meaning of the Agreement. If the Parties are unable to settle a dispute within fourteen (14) days, they agree, subject to the Agreement, to mediation using a single mediator acceptable to the Parties. If the Parties cannot agree on a mediator, then the Parties may request that CARFAC Saskatchewan appoint a mediator with respect to their dispute. If the mediation is unsuccessful, the disagreement will be subject to arbitration pursuant to *The Arbitration Act, 1992* (Saskatchewan), as may be amended. The Parties shall agree on an arbitrator. If the Parties cannot agree on an arbitrator, then the Parties may request that CARFAC Saskatchewan appoint a arbitrator with respect to their dispute. The cost of mediation and arbitration shall be borne equally by the Parties.
8. The invalidity of any provision of the Agreement or any term, condition or covenant therein contained on the part of any Party shall not affect the validity of any other provision or covenant thereof or therein contained as each such covenant and provision is separate and distinct.
9. The provisions contained in the Agreement and all Schedules attached to this Agreement constitute the entire agreement between the Parties and supersede all previous communications, representations, and agreements, whether oral or written, between the Parties with respect to the subject matter thereof, there being no representations, warranties, terms, conditions, undertakings, or collateral agreements (express, implied, or statutory), between the Parties other than as expressly set forth in the Agreement.
10. The Agreement may be executed in several counterparts and delivered by electronic facsimile transmission or other means of electronic communication capable of producing a printed copy, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

11. Time is of the essence of the Agreement.
12. The Agreement, and any other documents and instruments given pursuant thereto shall enure to the benefit of and be binding upon the Parties and the respective heirs, executors, administrators, successors and permitted assigns, as the case may be.
13. The Parties shall from time to time execute and deliver all such other and further deeds, documents, instruments and assurances as may be necessary or required to carry into force and effect the purpose and intent of the Agreement.

CARFAC Saskatchewan created this document and the accompanying notes to provide artists and others with information of a general nature only. The document and accompanying notes are not intended as a substitute for professional legal consultation and legal advice in any particular case. CARFAC Saskatchewan is not entitled to and does not hereby provide legal advice. Do not rely on this document and notes as professional legal advice; seek detailed legal advice before acting or relying upon any information contained in this document or accompanying notes. While this document and notes are based on information that was accurate and up-to-date as at the date of drafting, the accuracy and currency of any information will change over time. CARFAC Saskatchewan makes no representations whatsoever as to the applicability or suitability of this document or any accompanying notes to any particular person or circumstance. CARFAC Saskatchewan disclaims any and all liability for any reliance by anyone upon this document and the accompanying notes.

Schedule "B"
Samples

List and provide a detailed description of all Samples below, including a description of materials/medium, dimensions, theme, and any other relevant information..

X _____
Signature of Artist

X _____
*Signature of Agent or
Authorized Signatory of Agent*

Schedule "C"
Aboriginal Procedures, Protocol or Conditions

If applicable, list and describe below all Aboriginal procedures, protocols or conditions applicable to this Agreement.

X _____
Signature of Artist

X _____
*Signature of Agent or
Authorized Signatory of Agent*