

ARTISTS' COLLABORATION AGREEMENT FOR SASKATCHEWAN VISUAL ARTISTS

FOR USE BY ARTISTS WORKING TOGETHER (REV 2010-07-10)

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 Parties, including by affirming and recognizing:

- the important contribution of Parties 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 Parties to Saskatchewan's cultural heritage and development; and
- the importance of fair compensation to professional Parties 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.

CARFAC SASKATCHEWAN
www.carfac.sk.ca

1734 A Dewdney Ave
Regina, SK. S4R 1G6
T: (306) 522-9788

#203, 416 - 21st Street East
Saskatoon, SK. S7K 0C2
T: (306) 933-3206

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 Parties" 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.

- 2.3 All payments shall be made to the Parties at the addresses specified in this Agreement unless notified otherwise.
- 2.4 If either Party receives payment in respect of the Collaborative Work, payment of the percentage share to the other Party in accordance with the percentage set out in paragraph 2.2 of this Agreement shall be made within fifteen (15) days of receiving any amount in respect of the Collaborative Work. The Party receiving payment shall collect any taxes, duties and levies applicable, and to the extent required by law, shall remit the same to the other Party.
- 2.5 Overdue and unpaid amounts owed to a Party shall bear interest at the rate of twelve percent (12%) *per annum*, compounded monthly, until actual payment to the Party.
- 2.6 Either Party shall be entitled to set off any amount owing by that Party to the other Party in respect of the Collaborative Work against any amounts owed to them by the other Party in respect of the Collaborative Work.
- 2.7 This Agreement shall not govern any artistic effort, collaborative or otherwise, of the Parties, except with respect to the Collaborative Work. Each specific Artistic Work on which the Parties collaborate shall be subject to its own separate collaboration agreement.
- 2.8 The Parties shall affix a copyright notice to the Collaborative Work and, if the Collaborative Work is registered with the copyright office of any jurisdiction, the Parties agree to register the Collaborative Work in both Parties' names as joint owners of the copyright in the Collaborative Work. The copyright notice shall read as follows:

© [Artist 1] and [Artist 2][Year of Creation], all rights reserved.

3. Exploitation of Intellectual Property Rights

- 3.1 The Parties agree and covenant that they shall mutually control the exploitation of the Intellectual Property Rights in the Collaborative Work, provided that if there is a dispute as to the exploitation of the Collaborative Work, then the Party who initiated the Collaborative Work, if the Collaborative Work was not mutually initiated, shall have the final decision as to exploitation of the Intellectual Property Rights.

4. Assignment

- 4.1 Either Party may assign monies owing to him or her under this Agreement to a third party or assign any of his or her rights under this Agreement to a corporation he or she controls or through which he or she carries on business, with notice to the other Party.
- 4.2 A Party must have consent of the other Party to assign any of his or her rights to the Collaborative Work under this Agreement to a third party.

5. Representations and Warranties

- 5.1 Each Party represents and warrants that:

- a. the Parties jointly own the Collaborative Work as set out above;
- b. the Collaborative Work is original and does not infringe any existing Intellectual Property Rights of a third party;
- c. to the best of the Party's knowledge, there are no claims outstanding with respect to the Collaborative Work or any Intellectual Property Rights therein;
- d. the Parties are acting as independent contractors and not as partners, joint venturers, agents or employees of the other Party;
- e. the Party has not previously assigned, pledged or otherwise encumbered the rights granted under this Agreement;
- f. the Party has been advised of his or her right to obtain independent legal advice, and is entering into this Agreement freely without undue influence or under compulsion or duress; and
- g. the Parties agree to indemnify each other against any losses, claims or liabilities which may arise which are occasioned by breach of this Agreement by the other.

6. Term and Termination

6.1 This Agreement shall be valid for the duration of any Intellectual Property Rights in or to the Collaborative Work.

6.2 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.

6.3 Upon automatic termination pursuant to paragraph 6.2 above, the Collaborative Work shall be immediately and irrevocably assigned solely to the Party that was not the cause of the automatic termination.

6.4 If, prior to the completion of the Collaborative Work, the Parties disagree as to the design or execution of the Collaborative Work, either Party may terminate this Agreement by giving thirty (30) days written notice to the other Party. The Party giving notice shall be deemed to have transferred his or her ownership interest in the Collaborative Work and all Intellectual Property Rights in the Collaborative Work to the other Party on the termination date specified in the written notice.

7. Notice

7.1 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 Artist 1, to Artist 1 at: _____

Facsimile No.: _____; Email Address: _____

If to Artist 2, to Artist 2 at: _____

Facsimile No.: _____; Email Address: _____

7.2 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.

7.3 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 Witness

X _____
Signature of Artist 1

ARTIST 1 NAME: _____

X _____
Signature of Witness

X _____
Signature of Artist 2

ARTIST 2 NAME: _____

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 Artistic 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 an 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"
Collaborative Work

List and provide a detailed description of the Collaborative Work below, including a description of materials/medium, dimensions, theme, the purchase price or value of the Collaborative Work, the initiating Party and any other relevant information.

X _____
Signature of Artist 1

X _____
Signature of Artist 2

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 1

X _____
Signature of Artist 2