

BILL OF SALE AGREEMENT FOR SASKATCHEWAN VISUAL ARTISTS

TO TRANSFER OWNERSHIP OF ARTISTIC WORKS (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).

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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.

BILL OF SALE AGREEMENT

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

BETWEEN:

_____ (the “**Artist**”)

AND:

_____ (the “**Purchaser**”)

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 sell certain Artistic Works to the Purchaser;

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 Purchaser (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. Sale of Artistic Work

- 2.1 The Artist agrees to sell and the Purchaser agrees to buy certain Artistic Works as are described in Schedule “B” attached to this Agreement (the “**Purchased Works**”), subject to the terms and conditions of this Agreement.
- 2.2 The Purchaser shall pay to the Artist the amount indicated for each Purchased Work as described in Schedule “B” attached to this Agreement. The Purchaser shall pay to the Artist \$_____ for all Purchased Works (the “**Purchase Price**”). The Purchase Price shall be exclusive of any applicable taxes, levies, duties, or other regulatory charges, which shall be added to the Purchase Price to form the total price for the Purchased Works (the “**Total Price**”). The Total Price for the Purchased Works is \$_____.

- 2.3 The Purchaser agrees and covenants to pay the Artist as follows [*circle, initial and complete the applicable option*]:
- a. the Total Price on the date first written above; or
 - b. \$ _____ on the date first written above, with the balance of the Total Price, in the amount of \$ _____, to be paid to the Artist on or before the _____ day of _____, 20_____. Any balance of the Total Price not paid on or before that date shall accrue interest at the rate of twelve percent (12%) per year, compounded monthly, until actual payment to the Artist; or
 - c. \$ _____ on the date first written above, with the balance of the Total Price to be paid in _____ equal monthly instalments, beginning on the _____ day of _____, 20_____, and ending on the _____ day of _____, 20_____. Any overdue payment shall accrue interest at the rate of twelve percent (12%) per year, compounded monthly, until actual payment to the Artist.

2.4 Title in the Purchased Works shall remain with the Artist until all amounts, including interest, owed by the Purchaser to the Artist pursuant to this Agreement have been paid in full, at which time title shall pass to the Purchaser.

3. Intellectual Property

3.1 The Artist warrants that he or she is the owner of all Intellectual Property Rights in and to the Purchased Works. All Intellectual Property Rights in and to the Purchased Works are retained by the Artist and are not assigned, conveyed, or transferred, in whole or in part, by this Agreement. A valid copyright notice (as required by the *Copyright Act* (Canada)) has been placed on the Purchased Works which is visible and legible upon reasonable inspection.

3.2 All moral rights in and to the Purchased Works are retained by the Artist and have not been waived. The Purchaser shall not distort, mutilate, modify or destroy the Purchased Works without the prior written consent of the Artist.

3.3 Before reproducing, publishing or exhibiting the Purchased Works in public, the Purchaser shall obtain the written consent of the Artist.

4. Terms & Conditions of Sale

4.1 A copy of this Agreement shall be the receipt for the Purchaser for the purchase of the Purchased Works.

4.2 All liability for loss and damage of the Purchased Works are transferred to the Purchaser upon execution of this Agreement.

4.3 The Purchaser shall use its best efforts to maintain, restore and preserve the Purchased Works and shall bear responsibility and costs for same. If any restoration or preservation of the Purchased Works is required that affects the artistic integrity of the Purchased Works, the Purchaser agrees to contact and consult with the Artist before effecting any restoration or preservation, and to give the Artist the first opportunity to carry out such restoration or preservation. Should the Artist be unavailable, unwilling or unable to carry out such restoration

or preservation, the Purchaser shall make all reasonable efforts to maintain the artistic integrity of the Purchased Works in any restoration or preservation it undertakes.

5. Resale Rights

- 5.1 On resale or other transfer of one or any of the Purchased Works the Purchaser shall pay the Artist the greater of:
- a. fifteen percent (15%) of the difference between the resale price of the Purchased Work and the price paid by the Purchaser for the Purchased Work; or
 - b. fifteen percent (15%) of the increase in the fair market value of the Purchased Work as of the date of the transfer.

The amount owed to the Artist upon resale by the Purchaser of a Purchase Work shall be paid to the Artist within fourteen (14) days of the resale. The Purchaser shall also forward a copy of the bill of sale of such resale to the Artist within fourteen (14) days of the resale.

- 5.2 Upon resale of a Purchased Work, the Purchaser shall require the terms of this Agreement to apply to any sale to a subsequent purchaser.

6. Right to Exhibit

- 6.1 The Artist retains the right to exhibit the Work for up to sixty (60) days per every five (5) years from the date of signing of this Agreement, at no expense to the Purchaser. The first five year period shall commence on the date of this Agreement. The Artist shall give written notice to the Purchaser no later than one hundred twenty (120) days prior to the opening of the exhibit, and at the time of transport shall provide proof of insurance and prepaid transportation of the Purchased Work to and from the showing.

7. No Warranty

- 7.1 The Artist makes no warranty, express or implied, statutory or otherwise, as to the condition of the Purchased Works.

8. Notice

- 8.1 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: _____

- 8.2 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.
- 8.3 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 Purchaser or
Authorized Signatory of Purchaser*

PURCHASER 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"
Purchased Works

List and provide a detailed description of all Purchased Works below, including a description of materials/medium, dimensions, theme, the purchase price per work, and any other relevant information.

X _____
Signature of Artist

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

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 Purchaser or
Authorized Signatory of Purchaser*