



Musée des beaux-arts du Canada National Gallery of Canada



CARFAC
CANADIAN ARTISTS REPRESENTATION
LE FRONT DES ARTISTES CANADIENS



SCALE AGREEMENT

1:00 PREAMBLE

1:01 The parties to this Agreement are as follows: The National Gallery of Canada (hereinafter called the "**NGC**"), having its principal place of business in the National Capital Region as defined in the *Museums Act* and, jointly, Canadian Artists Representation/Le Front des artistes canadiens (hereinafter called "**CARFAC**") and Regroupement des artistes en arts visuels du Québec (hereinafter called "**RAAV**"). Hereinafter sometimes collectively referred to as the "**Association**".

1:02 CARFAC/RAAV and the NGC agree that the NGC will enter into the relevant Contracts, in a timely fashion, at such time when the NGC contemplates the engagement of a Canadian living Artist or Artists.

1:03 The Scale Agreement covers all the general terms governing the relationship between the NGC and CARFAC/RAAV when the NGC engages one or more Artists in accordance with the *Status of the Artist Act*, S.C., 1992, c. 33 (hereinafter called the "**SAA**").

1:04 This Agreement governs the professional relations between the NGC and all Canadian living visual Artists with the exception of copyright matters for those Artists who have chosen to be represented by a collective copyright society. Establishing a minimum fee for the use of existing works does not affect any of the rights conferred to copyright holders under Section 3 of the *Copyright Act*. Without restricting the generality of the foregoing, it is acknowledged that all fees hereunder are minimum fees that do not apply to or bind collective societies. If an Artist assigns or licenses his/her copyright to a collective society or appoints that society as his/her authorized agent, the terms authorized under the *Copyright Act*, and not the SAA and this Agreement, will apply to the works.

2:00 DEFINITIONS

2:01 The following terms shall be interpreted as follows:

2.02

a) "**Agreement**": This Scale Agreement between the NGC and CARFAC/RAAV.

b) "**Artist**": As defined by the *Status of the Artist Act*, S.C., 1992, c. 33, and covered by the certification granted to CARFAC/RAAV by the Canadian Artist and Producers Professional Relations Tribunal (hereinafter the "**CAPPRT**") and its legal successor, the Canada Industrial Labour Relations Board.

c) "**Artist Conversation**": An informal discussion involving an Artist with other participants and/or Q&A with the public.

d) "Artwork": Artwork can be in, but is not limited to, any of the following forms or technologies: painting, sculpture, prints, photographs, film, video, digital and electronic imagery or sound, performance and installation (see for reference: CAPPRT certification definition of visual artists 3.00).

e) "Collective": A society, association or corporation as defined in the *Copyright Act*, R.S.C., 1985, c. C-42.

f) "Consultation": Consultation services of a scope defined in the Contract and the Email of Intent. May include telephone discussions, e-mails, provision of support materials and meetings in preparation for the installation of the Artist's work.

g) "Contract": A contract between the NGC and an Artist under the terms of the Scale Agreement.

h) "Email of Intent": An email that outlines the services that an Artist is to provide and the compensation to be paid by the NGC prior to signing a contract. An Email of Intent is used when the NGC engages an Artist for Artist professional services (as set out in Schedule A) and for exhibition rights for temporary exhibitions (as set out in Schedule B.1).

i) "Engagement": Any act of contracting a Canadian living Artist(s).

j) "Installation": The Artist or Artist's technician(s) services may be required by the NGC at the time of the installation of the work on-site. The Artist and/or his/her technician(s) will be compensated for his/her professional services at a scope defined in the Contract.

k) "Museum Panels": Extended labels providing additional didactic information and/or context on the work(s) on display. Museum Panels can be printed or on interactive electronic devices. They can present image reproductions and/or videos of the work(s) on display or other artworks in relation to the work(s) on display.

l) "NGC Web Site": The web site used by the NGC to promote, describe and provide information on activities and exhibitions at the NGC.

m) "Performance": Artistic performance by an Artist for Gallery audiences within the context of the NGC exhibition program. Performance works will be subject to detailed event planning, agreed upon scenarios and staging requirements in an Annex to the relevant Contract; individual Contracts covering all performers are subject to the general liability insurance requirements of the NGC.

n) "Permanent Collection Installations": Rotations and long or short-term installations of the national collection in the permanent collection galleries. Installations may be grouped or loosely thematic but do not feature the usual temporary exhibition characteristics and instead fit within a broadly chronological framework of the permanent collection galleries. Permanent collection installations permit rotation of the collections, management of light exposure limits, outbound loan activity, and incorporation of new acquisitions into the displays.

o) "Production Partnership": A partnership with the Artist in which the Gallery supports, in whole or in part, production expenses for a new artwork for the purpose of presentation in an NGC exhibition, and in which instance the ownership of the artwork remains with the Artist. Relevant artist fees will be negotiated in an exhibition contract at the time the Artist is engaged.

p) "Production/Preparation": The Artist's production time or expenses, as agreed upon by the parties for work associated with readying a work for exhibition. This may include framing, making necessary modifications to an existing work to permit physical display, research, or other mutually agreed upon production work.

q) "Professional Services": Services provided to the NGC by Artists engaged thereby, including the use of their artistic work as covered by this Agreement.

r) "Reproduction": The act of reproducing a work of art, or any substantial part thereof, in any form.

s) "Skills and Techniques Workshop": A workshop in which an Artist demonstrates skills and techniques used in his/her work.

t) "Temporary Exhibition": Presentation of one or more artworks, normally within the temporary exhibition galleries, with a defined exhibition thesis, and situated within the Gallery's approved temporary exhibition plan and budgets. Temporary exhibitions will feature an exhibition title, informative text panel for the public and other form of exhibition-specific publications and corollary program support, subject to available resources.

u) "Web Database": The structured set of data that presents artworks in the collection of the NGC accessible through the NGC Web Site.

3:00 RECOGNITION

3:01 The NGC recognizes CARFAC as the exclusive bargaining agent for all Artists identified in the Certificate issued by the CAPPRT to CARFAC, dated December 31st, 1998, and includes:

"All independent professional visual and media artists in Canada who are authors of original artistic works of research or expression commissioned by a producer subject to the Status of the Artist Act and expressed in the form of painting, sculpture, printmaking, engraving, drawing, installation, performance art, craft-based media, textile art, fine art film and video art, fine art photography or any other form of expression of the same type, excluding:

a) Artists covered by the certification granted to the Conseil des métiers d'art du Québec by the Canadian Artist and Producers Professional Relations Tribunal on June 4, 1997 as amended June 26, 1998;

b) Artists covered by the certification granted to the Regroupement des artistes en arts visuels du Québec by the Canadian Artists and Producers Professional Relations Tribunal on April 15, 1997;

c) Artist covered by the certification granted to the Canadian Association of Photographers and Illustrators in Communications by the Canadian Artists and Producers Professional Relations Tribunal on April 26, 1996;

d) Artists covered by the certification granted to the Association des réalisateurs et réalisatrices du Québec by the Canadian Artists and Producers Professional Relations Tribunal on December 30th, 1997; and

e) Artists covered by the certification granted to the Writers Guild of Canada by the Canadian Artists and Producers Professional Relations Tribunal on June 25, 1996; and

f) Artists who identify themselves as craftspeople rather than visual artists."

3:02 The NGC also recognizes RAAV as the exclusive bargaining agent for all Artists identified in the Certificate issued by the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) to RAAV, dated April 15, 1997, and includes:

"all professional independent contractors in the field of visual arts in Quebec who are authors of original artistic works of research and or expression, either in single copy or a limited number of copies, that are commissioned or distributed by a producer subject to the Status of the Artist Act and expressed in the form of painting, sculpture, engraving, drawing, illustration, photography, textile art, installation, performance art, video art or any other form of expression on the same nature, excluding:

a) Independent contractors working in the fields of arts and crafts, film and audio-visual media;

b) Commercial photographers and commercial illustrators covered by the certification granted by the Canadian Artists and Producers Professional Relations Tribunal to the Canadian Association of Photographers and Illustrators in Communications on April 26, 1996 and in accordance with the terms of the agreement concluded between the Regroupement des artistes en arts visuels du Québec and the Canadian Association of Photographers and Illustrators in Communications on March 20, 1997;

c) Artists covered by the certification granted to the Union des Artistes by the Canadian Artists and Producers Professional Relations Tribunal on August 29, 1996 and in accordance with the terms of the agreement concluded between the Regroupement des artistes en arts visuels du Québec and the Union des Artistes on March 20, 1997;

d) Artists who practice the art of set design and costume design for theatrical use."

3:03 The NGC agrees that CARFAC and RAAV are bargaining agents for the purposes of this Agreement and recognizes CARFAC and RAAV as the exclusive representatives of all Artists enumerated above in 3:01 and 3:02 for the purpose of the administration of matters within the purview of this Agreement.

3:04 The NGC's mandate is to develop, maintain, and make known, throughout Canada and internationally, a collection of works of art, both historical and contemporary, with special, but not exclusive, reference to Canada, and to further knowledge, understanding, and enjoyment of art in general among all Canadians.

4:00 LAWS GOVERNING THIS AGREEMENT

4:01 This Agreement shall be subject to and construed by the laws of the Province of Ontario and federal laws as applicable.

4:02 Any clauses contained herein illegal in Canada, or any province, territory or municipality thereof shall not be binding therein. Any illegality in any clause or agreement shall not affect any other clause or agreement.

5:00 LANGUAGE

5:01 All business, including all written materials, conducted between the NGC and the Artist and all business, including written materials, between the NGC and CARFAC and RAAV shall be in one of the official languages.

6:00 MEMBERSHIP

6:01 Artists who are Canadian citizens or residents of Canada may choose to join CARFAC or RAAV as a member or remain as a non-member of the Association for the purposes of engagement by the NGC.

6:02 CARFAC/RAAV will provide membership information on individual members upon request.

6:03 The NGC shall not discriminate against an Artist on the basis of their memberships in CARFAC or RAAV.

7:00 ENGAGEMENT

7:01 The provisions of clauses **7:04 – 7:06** (inclusive) shall apply only to NGC's use of and/or engagement of a Canadian living Artist or Artists for Artist professional services (as set out in Schedule A) and for exhibition rights for temporary exhibitions (as set out in Schedule B.1). For greater certainty, the provisions of clauses **7:04 – 7:06** (inclusive) do not apply to NGC's use of Artist's works for reproduction or NGC Permanent Collection Installations.

7:02 The NGC shall enter into a Contract with an Artist covered by this Agreement for the purpose for which the Artist is engaged. The Contract shall be consistent with the examples attached to this Agreement.

7:03 The check off fee to be remitted to CARFAC or RAAV under clause **9:01** is to be calculated based on the total fees payable to the Artist under the relevant Contract (exclusive of agreed expenses) with the applicable check off fee percentage to be based on said Artist's membership status with the Association. The applicable check off fee percentage is 5% for a member of the Association and 10% for a non-member of the Association.

7:04 The NGC shall send an Email of Intent to an Artist, with a copy to CARFAC/RAAV, once the NGC plans to engage said Artist. The Email of Intent shall outline the planned uses of the Artist's Artwork and/or any work and/or services that will be requested from the Artist prior to the signing of a Contract. The Email of Intent shall list the: (i) Artist's name, contact information, and province of residence; (ii) nature of the Contract and type of fee(s); (iii) estimate amount of the Contract; and (iv) title or description and tentative date(s) for the proposed exhibition (if applicable and where available at the time of sending the Email of Intent). The Email of Intent shall also state the following: "Engagement with the NGC falls under the terms and conditions of the Scale Agreement between CARFAC/RAAV and the NGC. For more information on the Scale Agreement, please see the CARFAC/RAAV web sites."

7:05 The Email of Intent shall stipulate the anticipated date(s) of the engagement. The NGC must then proceed and enter into a relevant Contract in a timely fashion.

7:06 If the NGC fails to follow through or cancels the requirement outlined in the Email of Intent, the NGC shall reimburse all authorized expenses and compensate for any specifically pre-authorized work undertaken by the Artist.

7:07 A copy of all Contracts under this Agreement will be submitted on a quarterly basis to the Association within 15 business days after the end of the relevant quarter, or within 45 business days of a valid and justified request by the Association. CARFAC/RAAV hereby declare that the disclosure of information referred to herein is necessary for its research and statistics requirements. CARFAC and RAAV agree not to disclose any information in any of the Contracts submitted by the NGC and will hold the NGC harmless for any breach in confidentiality.

7:08 The NGC must inform an Artist that is being engaged that the Scale Agreement is available at the CARFAC/RAAV web sites.

8:00 FEES

8.01 Minimum fees for professional services, exhibition rights, and reproduction rights will follow the attached schedules to this Agreement. Any Artist engaged under this Agreement shall be free to negotiate remuneration above the minimum fee(s).

9:00 DUES

9:01 The NGC must remit to CARFAC or RAAV as applicable a check off of the fees payable to the Artist (exclusive of agreed expenses).

9:02 Upon request by the NGC or following receipt of the Email of Intent, CARFAC/RAAV shall provide the current status of membership with CARFAC or RAAV of the Artist named in the Email of Intent to the NGC as soon as the circumstances permit. The NGC will use such information to determine the applicable check off fee and prepare the relevant Contract with the Artist. As set out in clause **7:03**, the applicable check off fee percentage is 5% for a member of the Association and 10% for a non-member of the Association.

9:03 The dues mentioned in clause **9:01** above shall be remitted to CARFAC or RAAV annually (within 60 days after close of the NGC fiscal year) with a summary accounting.

10:00 SIGNING POWERS

10:01 When entering into a Relevant Contract, the NGC and the Artist or Artist's duly authorized representative shall sign said Contract.

11:00 TERMINATION

11:01 A Contract may be terminated in the following circumstances:

- a)** By mutual agreement, in writing;
- b)** For a cause, or because of an event, over which one or the other party has no control;
- c)** For a justified change in schedule;
- d)** For a just and sufficient cause;
- e)** If the NGC and the Artist are in a dispute and the resolution of that dispute cannot be reached in adequate time to fulfill the contractual obligation and material engagement related thereto, and that the item in dispute will prevent the adequate fulfillment of the Contract.

11:02 In all cases where the Contract is terminated by the NGC under clauses **11:01 b)**, **11:01 c)**, and **11:01 e)** hereunder, the Artist shall receive fifty percent (50%) of his or her professional fees plus actual preauthorized and paid disbursements at the time of termination.

11:03 In the event that a Contract is terminated under clauses **11:01 b)**, **11:01 c)**, and **11:01 e)** hereunder, the NGC will make every effort, where possible and feasible, to reschedule the engagement, upon mutually agreed to conditions. If it is rescheduled, the payments mentioned in clause **11:02** above will be credited / adjusted to the Contract.

12:00 LONG TERM AGREEMENTS

12:01 Artists' work(s) that are currently subject to a NGC long term agreement and/or license signed prior to the Scale Agreement effective April 1, 2015 will expire in the ten (10) year period following 2015. 2025 will be the final year for the existence of such NGC long term agreements and/or licenses.

12:02 If an Artist with work(s) in the NGC permanent collection agrees to sign a Long Term Agreement (in accordance with the Template Long Term Agreement attached as Schedule D to this Agreement), such Long Term Agreement shall supercede all prior long term agreement(s) and/or licenses between the NGC and the Artist entered into prior to April 1, 2015.

13:00 HARASSMENT POLICY

13:01 All parties agree that the Harassment Policy which applies to NGC employees will also apply to Artists acting as independent contractors to the NGC under this Agreement. This policy may be altered by the NGC from time to time.

14:00 WORKPLACE SAFETY

14:01 The parties agree that the suite of Occupational Health and Safety policies which apply to NGC employees will also apply to Artists acting as independent contractors to the NGC under this Agreement while working within its facilities. These Policies may be altered from time to time by the NGC.

15:00 NOTIFICATION OF CHANGES IN POLICY

15:01 The NGC shall make every effort possible to provide written copies to CARFAC and RAAV of any changes to existing relevant policies and new policies that affect the Engagement of Artists covered by this Agreement.

16:00 ACKNOWLEDGEMENT

16:01 Acknowledgement of CARFAC/RAAV shall include the following: the inclusion of the CARFAC and RAAV logos on all copies of this Scale Agreement and all Contracts falling under it.

17:00 ACCESS TO INFORMATION

17:01 CARFAC/RAAV acknowledges that the NGC is subject to the provisions of the *Access to Information Act* and may therefore be required to release information pertaining to this Agreement which is the subject of a formal request under that Act and which is not exempt from disclosure under the provisions of that Act. If there is a request pertaining to this Agreement or any Contract under this Agreement, the NGC will make every effort possible to notify CARFAC or RAAV.

18:00 DISPUTE RESOLUTION

18:01 The parties agree that all differences between them arising from the interpretation, application, administration or alleged contravention of this Agreement shall be dealt with, for a final settlement thereof without pressure tactics, according to the following provisions:

- a) The party wishing to raise the issue must do so with the other party within thirty (30) days from the time in which both parties became aware of the incident giving rise to the issue. This must be done in writing and must set out the issue and the relief claimed. If the above time limit is not adhered to, then the matter cannot be raised. In the case the issue is raised by CARFAC/RAAV and relates to an Artist, the Artist's written consent is required as a pre-condition to the grievance.
- b) The parties agree to use their best efforts to settle any differences as to the meaning of this Agreement. If they are unable to settle the dispute, it will be referred within thirty (30) days from the date the issue was raised under **18:01 a)** to a Joint Standing Committee comprised of two (2) members for CARFAC/RAAV and two (2) members for the NGC. All the members of the Joint Standing Committee, as a prerequisite, should have no personal interest in the dispute. The Committee will meet as required, and it will make every attempt to come to an agreeable solution. The Committee shall ensure that the parties or their representatives have a full and fair opportunity to present their evidence and argument in accordance with a process determined by the Committee after consultation with the parties or their representatives. A solution agreed to in writing by the four (4) members of the Joint Standing Committee shall constitute a final settlement of the dispute and shall be binding upon all parties. Failing such settlement at Joint Standing Committee level, either party can refer the differences to an arbitrator. The arbitrator must be agreed upon by the parties, failing which one party or the other may ask the Minister of Labour to appoint such an arbitrator.
- c) The parties agree, as much as possible, to make arbitration accessible, to reduce the delays of the procedure and to keep the costs thereof at the lowest possible level. To make this process more efficient, the parties agree to submit the grievance, the scale agreement, the exchanges between the parties, any objection (maximum 10 pages) raised by one or the other party and all their evidence by affidavit to the arbitrator (copies to the other parties), the claimant together with the grievance, and the respondents within fifteen (15) days from their receipts of the claimants' affidavits. Either party shall have the right to cross-examine on these affidavits on the basis of the procedure set forth to this effect by the arbitrator. The arbitrator will proceed promptly to a streamlined and accelerated hearing and he/she shall render his/her decision within a maximum timeframe of thirty (30) days of the hearing.
- d) The parties may agree to continue the hearing for more than one (1) day or the arbitrator may do so for sufficient reason.
- e) The parties agree not to submit additional notes following the arbitration hearing.
- f) The parties agree that the arbitrator does not have jurisdiction to alter, amend, change, modify, add to or subtract from any of the provisions of this Agreement.

g) The cost of the arbitrator's fees and related expenses shall be shared equally by both parties.

h) The parties may by written agreement proceed by teleconference in order to keep the process expeditious and economically efficient.

18:02 In the case of a dispute, the NGC will, upon request, disclose the applicable Contracts to CARFAC/RAAV, within the best possible timeframe but no later than seven (7) days from the date of a request to this effect by CARFAC/RAAV.

19:00 INDEPENDENT CONTRACTOR STATUS

19:01 The Artists are acting as independent contractors under this Agreement, subject to applicable laws.

20:00 ADMISSION

20:01 The NGC shall provide CARFAC and RAAV membership with free admission to its galleries.

21:00 JOINT CONSULTATION

21.01 The parties are prepared to consult on all matters relative to this Agreement.

21.02 A Joint Consultation Committee shall be established and governed by principles and/or procedures to be mutually agreed upon by the parties. The parties may communicate every six (6) months to discuss issues relating to or arising out of this Agreement, and overall to maintain good relations in the application and/or administration of this Agreement.

21.03 The NGC agrees to refer new uses or new forms of distributions, professional services, new and altered exhibition spaces that are not currently specified in this Agreement to the Joint Consultation Committee, where interim rates will be negotiated in good faith.

22:00 NOTICE

22:01 Any notice required hereunder shall be in writing and shall be delivered to the other parties at the relevant addresses:

National Gallery of Canada
Attention: Director
380 Sussex Drive
P.O. Box 427, Station A
Ottawa, Ontario
K1N 9N4

Canadian Artists' Representation / Le front des artistes canadiens (CARFAC)
Attention: Executive Director
2 Daly Avenue, Suite 250
Ottawa, Ontario
K1N 6E2

Le regroupement des artistes en arts visuels du Québec (RAAV)
Attention : Directeur général
2205, rue Parthenais, # 214
Montréal (Québec)
H2K 3T3

23:00 DURATION OF AGREEMENT

23:01 The Agreement shall take effect upon its signature by both parties for a duration of four (4) years.

23:02 An annual increase of 1.5% applies to the Artist professional service fees set out in Schedule A to this Agreement; the first annual increase shall be applied on April 1st of the year following the date of signature of this Agreement, with subsequent annual increases applied on April 1st of the applicable year. For greater certainty, no annual increase shall apply to the fees set out in Schedules B and C to this Agreement.

23:03 Either party may, in the three (3) months immediately preceding the expiry date, issue a notice to the other party to begin bargaining in order to renew or revise it, or to enter into a new Scale Agreement.

23:04 The former agreement shall remain in place during the negotiation of the new agreement.

23:05 If a notice to bargain has not been issued, the Agreement will be extended from year to year.

Read and ratified this 31st day of May 2018



For the National Gallery of Canada



For the Regroupement des artistes en arts visuels du Québec



For Canadian Artists' Representation / Le front des artistes canadiens