

CONSULTING AGREEMENT

This Consulting Agreement (“Agreement”) is made between VERMONT COLLEGE OF FINE ARTS, INC., a Vermont non-profit corporation (“College”), and _____ (“Consultant”). The College and Consultant are hereinafter sometimes referred to individually as a “party” and jointly as the “parties” to this Agreement.

WHEREAS, the College desires to obtain _____ services from Consultant, and Consultant is in the business of providing such services and has agreed to provide them on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the College and Consultant hereby agree as follows:

1. Scope of Work. Consultant will perform the services described on **Schedule A** attached to this Agreement (the “Statement of Work”).
2. Term. Unless earlier terminated in accordance with this Agreement, this Agreement shall commence upon the execution of this Agreement and shall continue in full force and effect through _____, 201_, or upon satisfactory completion of Consultant’s duties under this Agreement, whichever is earlier. This Agreement may be extended by mutual written agreement.
3. Compensation. As full compensation for the services rendered pursuant to this Agreement, the College shall pay Consultant the consideration specified on **Schedule A**. Such compensation shall be payable within 30 days of receipt of Consultant’s invoice.
4. Expenses. The College shall reimburse Consultant for reasonable out-of-pocket expenses approved in advance by the College in accordance with the terms of **Schedule A**.
5. Confidentiality. Consultant acknowledges that, during the rendition of services to the College, Consultant has had or will have access to, and become acquainted with, various trade secrets, inventions, innovations, processes, information, records and specifications owned or licensed by the College and/or used by the College in connection with the operation of its business including, without limitation, the College’s business and processes, methods, accounts and procedures, and other business information, some or all of which may not be marked or labeled “confidential.” Consultant agrees that it will not disclose any of the aforesaid, directly or indirectly, or use any of them in any manner, either during the term of the Agreement or at any time thereafter, except as authorized by the College during the period of rendition of services to the College and except as required by law, provided that Consultant provides the College a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure. Consultant shall not retain any copies of the College documentation (including electronic copies) without the College’s prior written permission. Upon expiration or earlier termination of this Agreement, Consultant shall return to the College

any and all College documents. Neither party will disclose the terms of this Agreement to any person (other than its attorneys, accountants, and professional advisors) without the prior written consent of the other party. Consultant further represents and warrants that Consultant has not disclosed and will not disclose to the College, nor use for the College's benefit, any confidential information or trade secrets of any prior employer or principal, unless and until such confidential information and trade secrets have become public knowledge without Consultant's participation, or unless such disclosure is expressly permitted by any agreement with such prior employer or principal.

6. No Conflicts/Non-Infringement. Consultant represents and warrants that Consultant is free to enter into this Agreement and that this engagement does not violate the terms of any agreement between Consultant and any third party.

7. Work for Hire; Intellectual Property Rights. Consultant agrees that any work of authorship created or developed by Consultant during the rendition of services to the College, either individually or jointly with others, in the course of the rendition of services to the College shall be deemed a "work for hire," and the exclusive property of the College. With respect to any invention, trade secret, or work of authorship (to the extent not deemed a "work for hire" by operation of law) created or developed in the course of the rendition of services to the College, Consultant hereby irrevocably assigns, transfers, and conveys to the College all of Consultant's right, title and interest in such property, including but not limited to, all rights of patent, copyright, trade secret or other proprietary right in such property. Further, Consultant agrees to execute any documents or take any action reasonably requested by the College to perfect the College's ownership of any such property. Consultant further agrees that, to the best of its knowledge, all work created or developed by Consultant will be original and non-infringing.

8. Quality, Skill, Workmanship. Consultant shall perform the services with that standard of care, skill and diligence as is normally provided by skilled persons in Consultant's trade, business or profession providing similar services.

9. Indemnification. Consultant shall defend, indemnify, and hold harmless the College, its trustees, officers, agents, and employees ("Indemnified Parties") against any claims made or legal actions brought against an Indemnified Party(ies) by any person or entity as a result of injuries, damages, expenses and losses incurred by such a person or entity ("Liabilities") arising out of Consultant's negligence or failure to render services in compliance with this Agreement, including but not limited to any third-party claims alleging that the College's use of the work product (or any element thereof) infringes any copyright, patent, trademark, trade secret, or other right of any third party, except to the extent that any Liability (or portion thereof) is attributable to the Indemnified Party's negligence or the instructions provided to Consultant by the Indemnified Party.

10. LIMITATION OF LIABILITY

(a) LIMITATION OF LIABILITY. SUBJECT TO SECTION 10(c), IN NO EVENT SHALL EITHER PARTY'S (OR ITS OFFICERS', TRUSTEES',

EMPLOYEES', OR AGENTS') LIABILITY TO THE OTHER PARTY FOR ANY CLAIM ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, EXCEED THE TOTAL FEES PAID BY COLLEGE TO CONSULTANT HEREUNDER.

(b) NO CONSEQUENTIAL DAMAGES. SUBJECT TO SECTION 8(c), IN NO EVENT SHALL EITHER PARTY (OR ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND GOODWILL, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) EXCEPTIONS. THE LIMITATIONS OF LIABILITY SET FORTH IN SECTIONS 10(a) AND 10(b) SHALL NOT APPLY TO ANY CLAIMS FOR WHICH CONSULTANT IS OBLIGATED TO INDEMNIFY COLLEGE UNDER SECTION 9.

11. Termination.

(a) By Mutual Agreement. The parties may terminate this Agreement at any time by mutual agreement.

(b) With Cause. Either party may terminate this Agreement immediately for cause. For this purpose, "cause" means a material breach of this Agreement by the other party that is not cured within fifteen (15) days of the receipt of notice of the alleged breach by the non-breaching party to the breaching party.

12. Independent Contractor. In the performance of services under this Agreement, it is understood that Consultant shall at all times be acting and performing independently of the College's control as to the details and means by which the services are provided. Consultant is providing services to the College as an independent contractor and not as an employee, partner, or agent of the College. Nothing contained herein shall be deemed to create a relationship of employment, association, partnership, or joint venture between the College and Consultant. It is understood that the College does not by reason of this Agreement agree to use Consultant exclusively or at any fixed level. It is likewise understood that Consultant is free to contract for similar services with other persons or companies while under contract with the College. The College shall not be responsible for withholding taxes with respect to Consultant's compensation hereunder, and Consultant shall indemnify, defend, and hold harmless the College from and against any claim arising out of Consultant's failure to pay any taxes, assessments, or contributions which it is required to pay. Consultant shall have no claim against the College hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. Consultant's taxpayer identification number is specified on the signature page of this Agreement.

13. No Authority. Consultant shall have no authority hereunder to take any action, create any obligation, make any commitment, incur any indebtedness, or enter into any agreement on behalf of the College. Consultant shall not in connection with any services provided to or on behalf of the College represent to any person or entity that Consultant is associated with the College in any capacity other than that of an independent contractor.

14. Attorneys' Fees. In the event of any litigation arising out of this Agreement, the costs of litigation, including reasonable attorneys' fees of the prevailing party shall be paid by the losing party.

15. No Assignment; No Delegation. The rights and duties of Consultant to perform its obligations under this Agreement may not be assigned or delegated to another party without the written consent of the College.

16. Severability. If any provision of this Agreement or any portion thereof is held to be invalid and unenforceable, the balance of this Agreement shall nevertheless remain in full force and effect.

17. Waiver. A waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

18. Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the State of Vermont.

19. Jurisdiction; Venue. Each party consents to the exclusive in personam jurisdiction of the courts of the State of Vermont and the United States District Court for the District of Vermont in connection with any claim or dispute arising under or in connection with this Agreement and waives any objection to venue in these courts.

20. Facsimile Signatures. For purposes of this Agreement a facsimile signature shall be treated as an actual signature.

21. Amendment. No change or modification to this Agreement shall be valid or binding unless the same is in writing and signed by both parties.

22. No Presumption Against Drafter. Each of the parties to this Agreement participated in the drafting of this Agreement, and the interpretation of any ambiguity contained in this Agreement will not be affected by the claim that a particular party drafted any provision hereof.

23. Entire Agreement. This Agreement and any attached Schedules constitute the entire agreement and understanding by and between the parties with respect to the subject matter herein referred to and superseded all prior understandings and agreements.

[SIGNATURE PAGE TO FOLLOW ON NEXT PAGE]

INDEPENDENT CONTRACTOR ACKNOWLEDGES THAT HE OR SHE HAS READ THIS AGREEMENT AND FULLY UNDERSTANDS ITS TERMS. HE OR SHE IS AWARE THAT THIS AGREEMENT INCLUDES, AMONG OTHER THINGS, AN AGREEMENT NOT TO DISCLOSE CONFIDENTIAL INFORMATION.

INTENDING TO BE LEGALLY BOUND HEREBY, the parties have executed this Agreement on the date(s) set forth below.

VERMONT COLLEGE OF FINE ARTS, INC.

By: _____, 201__
Name: _____ Date
Title: _____

CONSULTANT

_____, 201__
Date

Street

City, State, Zip Code

Consultant's taxpayer identification number: _____

SCHEDULE A

STATEMENT OF WORK

(a) Scope of Work.

(b) Payment Terms.