

## CaFÉ™ SERVICE AGREEMENT

WESTAF | 1888 Sherman Street, Suite 375, Denver, CO 80203 | [www.westaf.org](http://www.westaf.org)  
P (303) 629.1166 | F (303) 629.9717



This **Service Agreement** is dated  , 2018 ("Effective Date") and entered into between **Western States Arts Federation**, a Colorado nonprofit corporation ("WESTAF"), and the client identified in the signature block of this Agreement ("Client"). WESTAF and Client agree as follows:

### 1. Definitions.

1.1 "**Access Term**" means the term of each Contest identified in the Client Information Form that includes the actual life-cycle of a Contest comprising the period of time that a call is open through the time the Contest is concluded, and the period of time that Client may continue to access all of its calls, both past and present, as set forth in the Documentation.

1.2 "**Artists**" means any artists who use the CaFÉ Service to submit to or otherwise participate in a Client's Contests and who have been supplied user identifications and passwords by WESTAF for this purpose.

1.3 "**CaFÉ Service**" means the web-based service, including the Software, that allows organizations and administrators to manage Artist-application and jury processes related to calls for entry for Contests using the Software hosted by WESTAF and as made available by WESTAF as further described in Attachment 1.

1.4 "**Client Data**" means the information, including images, text, and video, input into the CaFÉ Service by Client and by Artists with respect to their Submissions to and participation in a Client's Contest.

1.5 "**Client Information Form**" means each client information form completed by Client and accepted by WESTAF, the form of which is attached to this Agreement as Attachment 3. Each Client Information Form is incorporated by reference into this Agreement and made a part hereof.

1.6 "**Contest**" means a contest, competition, solicitation, and other artist and art-selection related events for the selection of artists or art for display, acquisition or other use of such art objects sponsored by Client that is identified in a Client Information Form.

1.7 "**Documentation**" means the user manuals provided to Client in connection with the CaFÉ Service or Software in either electronic, online help files or hard copy format.

1.8 "**Fees**" have the meaning given in Section 3.1.

1.9 "**Financial Transaction Assistance**" means the financial transaction assistance services described in Attachment 4.

1.10 "**Intellectual Property Rights**" will mean all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

1.11 "**Software**" means the WESTAF computer software programs described in Attachment 1, including all applicable Documentation and any updates and new releases thereto made available to Client pursuant to this Agreement.

1.12 "**Submissions**" has the meaning given in Section 2.2.

1.13 "**Support**" means WESTAF's standard technical support for Client's use and operation of the CaFÉ Service described in Attachment 2.

1.14 "**Third Party Software**" means any third party computer software programs used by Client in conjunction with its use of the CaFÉ Service.

1.15 "**User Account**" has the meaning given in Section 2.5.

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1.16 **"Users"** means Client's employees and independent contractors who are authorized by Client to use the CaFÉ Service for Client's Contests on behalf of Client and have been supplied user identifications and passwords by WESTAF for this purpose.

## 2. Service.

2.1 **Services.** Subject to the terms and conditions of this Agreement, WESTAF shall (a) make the CaFÉ Service available to Client in accordance with this Agreement, (b) provide Support as described in Attachment 2 and other services as described in Attachment 1, and (c) perform Financial Transaction Assistance, if applicable, in accordance with Attachment 4.

2.2 **Access and Use.** Subject to the terms and conditions of this Agreement, WESTAF grants to Client, during the Term, a non-exclusive, non-transferable, limited right to remotely access and use the CaFÉ Service solely for Client's Contests in accordance with the Documentation, the limitations set forth in Attachment 1 and the other terms and conditions of this Agreement. Client's right to use the CaFÉ Service includes the right to solicit the submission of applications, information and materials from Artists through the CaFÉ Service for Contests ("Submissions").

2.3 **Additional Contests.** If Client wishes to add additional Contests, Client will submit a written request for such Contests using the Client Information Form. Upon WESTAF's written acceptance of the terms of any such additional Contest, and payment of the applicable fees, WESTAF shall make the CaFÉ Service available for the additional Contest on the terms and conditions set forth in this Agreement.

2.4 **Client Resources.** Client shall be solely responsible for, at its own expense, acquiring, installing and maintaining all connectivity equipment, Internet and network connections, hardware, Third Party Software and other equipment as may be necessary for its Users to connect to and obtain access to the CaFÉ Service.

2.5 **Users.** Each User will be assigned a unique user identification name and password ("User ID") for access to and use of the CaFÉ Service (a "User Account"). Client shall be responsible for ensuring the security and confidentiality of its User IDs. User IDs will be shared within the Client's organization provided that User IDs may not be provided to any individual who is not a User. Client will use commercially reasonable efforts to prevent unauthorized access to, or use of, the CaFÉ Service, and notify WESTAF promptly of any such unauthorized use. Access to the CaFÉ Service cannot be shared with anyone other than Client's Users and Artists.

2.6 **Restrictions on Use.** Client is responsible for all activities that occur under Client's User Accounts. Except as expressly permitted in this Agreement or as otherwise authorized by WESTAF in writing, Client will not, and will not permit any User or third party to (a) copy, transmit, store, publicly display, modify, adapt, alter, translate, or create derivative works from the Software, except as required to use the CaFÉ Service in accordance with this Agreement and the limitations and restrictions included as part of the Software and CaFÉ Service; (b) sublicense, lease, rent, loan, sell, re-sell, distribute, make available or otherwise transfer the Software or access to or use of the CaFÉ Service to any third party for any purpose, including to accept Submissions or to manage or jury Submissions for any other person or for any other contest, competition, solicitation or other event other than Client's Contests, (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software; (d) do anything to modify or restrict any other person's access to or use of the CaFÉ Service or Software; (e) use or permit others to use the CaFÉ Service or Software to commit any unlawful act, to violate any person's right, or to annoy, harass, harm, threaten or intimidate another person; or (f) otherwise use or copy the CaFÉ Service or Software except as expressly allowed under Section 2.1.

2.7 **Client Data.** Client or Artists own all Client Data and WESTAF makes no claim of ownership in or to and does not exert any control over Client Data.

## 3. Fees and Payment.

3.1 **Fees.** As consideration for use of the CaFÉ Service and the provision of Support and other services under this Agreement, Client agrees to pay to WESTAF the fees set forth in Attachment 1 for each Contest identified in a Client Information Form ("Fees").

3.2 **Payment Terms.** Except for Fees that are set-off by and paid to WESTAF against Eligible Entry Fee Payments, as defined and provided for in Attachment 4, Client will pay all Fees within 30 days after the receipt of WESTAF's applicable invoice. WESTAF reserves the right (in addition to any other rights or remedies WESTAF

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may have) to discontinue the CaFÉ Service and suspend all User ID's, User Accounts and Client's access to the CaFÉ Service upon written notice by WESTAF that any Fees are more than 30 days overdue until such amounts are paid in full. All payments must be made in U.S. dollars. All Fees are exclusive of, and Client will pay, all applicable, sales, use and other taxes (other than taxes on WESTAF's net income), export and import fees, customs duties and similar charges applicable to the transactions contemplated by this Agreement, except for those taxes from which Client is exempt.

#### **4. Term; Termination.**

**4.1 Term.** The term of this Agreement shall be a one (1) year period, unless sooner terminated as provided for under this Agreement (the "Term"). The initial term will begin upon the date WESTAF accepts this Agreement as indicated by its execution of this Agreement.

**4.2 Renewals.** After the expiration of the initial term or any subsequent term under this Agreement, WESTAF and Client may renew the services provided for under this Agreement for an additional Term by entering into a written renewal agreement (a "Renewal"). Fees for renewals accepted by WESTAF shall be at then-current rates for the CaFÉ Service.

**4.3 Termination.** Either party may terminate this Agreement if the other party breaches any material provision of the Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof. This Agreement shall also terminate upon the expiration of the last Term.

**4.4 Effects of Termination.** Upon termination of this Agreement and subject to the last sentence of this Section, (a) any amounts owed to a party under this Agreement before such termination will be immediately due and payable; (b) all rights granted in this Agreement will immediately cease to exist; and (c) unless otherwise permitted by WESTAF, Client must discontinue all use of the CaFÉ Service and return to WESTAF or destroy all copies of the Documentation in Client's possession or control, except for one archival copy that Client may retain to comply with state retention requirements for the required time period, prior to return or destruction thereof. Sections 1, 2.6, 3, 4.4, 5, 6, 7 and 8 together with any accrued payment obligations and Attachment 4, if applicable, will survive termination of this Agreement for any reason.

#### **5. Warranty Disclaimer.**

**5.1 Performance.** During the Term, WESTAF warrants that the CaFÉ Service, including the Software, when used as permitted by WESTAF and in accordance with the instructions in the Documentation, will operate substantially as described in the Documentation. WESTAF does not warrant the Client's use of the CaFÉ Service will be error-free or uninterrupted. WESTAF will, at its own expense and as its sole obligation and Client's exclusive remedy for any breach of this warranty, use reasonable commercial efforts to correct any reproducible material error in the CaFÉ Service reported to WESTAF by Client in writing during the Term or, if not possible to do so within a reasonable period of time, return to Client the unearned portion of any Fees paid by Client and this Agreement will be deemed terminated.

**5.2 Disclaimers.** THE EXPRESS WARRANTIES IN SECTION 5.1 AND SECTION 7.1 ARE IN LIEU OF AND WESTAF HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE AND CAFÉ SERVICE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 5.1 AND SECTION 7.1, ACCESS TO AND USE OF THE CAFÉ SERVICE, INCLUDING THE SOFTWARE, IS PROVIDED "AS IS" WITH ALL FAULTS.

**6. Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE USE OR AVAILABILITY OF THE CAFÉ SERVICE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WESTAF'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE CAFÉ SERVICE AND THE SOFTWARE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO WESTAF DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.

#### **7. Security and Privacy**

**7.1 Security Standards.** WESTAF warrants that the CaFÉ Service will be compliant with Payment Card Industry Data Security Standards as published by PCI Security Standards Council, LLC ([www.pcisecuritystandards.org/](http://www.pcisecuritystandards.org/)) ("PCI DSS Compliant"). If the CaFÉ Service is not PCI DSS Compliant, then WESTAF shall do the following as Client's sole remedy: (a) defend the Client against any third party claims arising out of and proximately caused by the failure of the CaFÉ Service to be PCI DSS Compliant to the extent such a defense is actually covered by any policy of insurance in effect for WESTAF's benefit, and (b) indemnify and hold harmless the Client from all damages (other than consequential and indirect damages), including claims by third party claimants, arising out of and proximately caused by the CaFÉ Service not being PCI DSS Compliant to the extent such damages are actually covered by any policy of insurance in effect for WESTAF's benefit. WESTAF presently has and will use commercially reasonable efforts to maintain liability insurance related to security breaches affecting the CaFÉ Service. The parties intend that WESTAF's obligations and Client's rights under this Section 7 are limited solely to amounts actually available under policies of liability insurance maintained by WESTAF.

**7.2 Privacy Policy.** Access to and use of the CaFÉ Service is subject to WESTAF's privacy policy as published online and available through the web site for the CaFÉ Service.

## 8. General

**8.1 Proprietary Rights.** The CaFÉ Service, Software and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of WESTAF and its licensors. All rights in and to the CaFÉ Service and Software not expressly granted to Client in this Agreement are reserved by WESTAF and its licensors. Client will not remove, alter, or obscure any proprietary notices (including copyright notices) of WESTAF or its licensors on the Software or Documentation or included as part of the CaFÉ Service.

**8.2 Third Party Software.** If Third Party Software included with the CaFÉ Service is subject to additional terms and conditions imposed by WESTAF's third party licensors, then Client agrees to comply with all such applicable terms and conditions.

**8.3 Assignment.** Neither party may assign or transfer, by operation of law or otherwise, any of its rights under the Agreement (including the license rights granted to Client to access the CaFÉ Service) to any third party without the other party's prior written consent, which consent will not be unreasonably withheld or delayed; except that either party may assign this Agreement, without consent, to any successor to all or substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. An assignment may increase Fees if it results in a change in Contest terms. Any attempted assignment or transfer in violation of the foregoing will be null and void.

**8.4 Force Majeure.** Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond the reasonable control of such party.

**8.5 Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), electronic mail or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth beneath such party's signature, and will be effective upon receipt. Either party may change its address by giving notice of the new address to the other party.

## 8.6 Governing Law and Venue.

**8.6.1 In General.** Except as provided for in Section 8.6.2, this Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado, without reference to its choice of laws rules. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**8.6.2 Governmental Entities.** If Client is a governmental entity or agency, then this Agreement will be governed by and interpreted in accordance the laws of the state under which Client is organized or created without reference to such state's choice of law provisions. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in such state in a judicial district in which Client's executive offices are located and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**8.7 Remedies.** Except as exclusive obligations and remedies are expressly provided for in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Client acknowledges that the Software and CaFÉ Service contain valuable trade secrets, Intellectual Property and other proprietary information of WESTAF, that any actual or threatened breach of Section 2 of this Agreement will cause immediate and irreparable harm to WESTAF for which monetary damages would be an inadequate remedy, and that injunctive relief without necessity of any bond being posted is an appropriate remedy for such breach.

**8.8 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**8.9 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Section 6 will remain in effect notwithstanding the unenforceability of any provision in Section 5.2 or Section 7.1 of this Agreement.

**8.10 Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to" And "Section" reference to Sections and subsections of this Agreement with any reference to a Section including all subsections under that Section.

**8.11 Entire Agreement.** This Agreement (including all exhibits and attachments) constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. The terms of any purchase order or similar document submitted by Client to WESTAF concerning this Agreement or the CaFÉ Service will have no effect.

**9. Attachments.** There are five Attachments to this Agreement, Attachments 1, 2, 3, 4, and 5 (each referred to as an "Attachment" and its number). Attachments 1, 2 and 3 are part of this Agreement, Attachment 4 is a part of this Agreement only if the Financial Transaction Assistance box is checked as part of Attachment 1, and Attachment 5 is part of this Agreement only if the client is a Florida state entity. All Attachments which are a part of this Agreement are incorporated into this Agreement as if set forth in full in this Section 9. Words used in an Attachment which are not defined in the Attachment have the meaning given to them in this Agreement.

The duly authorized representatives of WESTAF and Client have executed this Service Agreement as of the Effective Date.

<b>CLIENT:</b>	<b>WESTAF</b>
	<b>WESTERN STATES ARTS FEDERATION</b>
Signature:	Signature:
Printed:	Printed:
Title:	Title:
Address:	Address: Attn.: CaFÉ Manager 1888 Sherman Street, Suite 375 Denver, CO 80203

## ATTACHMENT 1

### CaFÉ SERVICE DESCRIPTION AND FEE SCHEDULE

**1. Software Description.** The Software to which access will be provided under this Agreement will be the current release of the WESTAF web based software accessed at the URL addresses set forth in paragraph 3 of this Attachment, or any other address provided by WESTAF, and known as CaFÉ™ Software which creates and manages a database to accept applications from and to hold and manage the data to judge Submissions by Artists for entry into various contests or competitions for the selection of art for display, acquisition, or other use of such art objects by public agencies and other sponsors of such contests and competitions in online modules which include a browser interface and data encryption, and, as part of the CaFÉ Service, transmission of, access to, and storage of Client Data.

**2. Software Modules and Services.** Client's use of and access to the Software includes the following modules and services subject to an annual term:

▶ **Application & Jury Modules:** All calls in a package must be started within the annual term.

▶ **Image/Media Management Modules**

☐ **Financial Transaction Assistance:** WESTAF agrees to provide and Client retains WESTAF to provide Financial Transaction Assistance as described in Attachment 4. Financial Transaction Assistance is **only applicable if** Client requires an entry fee and payment is processed using Visa or MasterCard.

**3. Access.** Client shall access and use the Software and CaFÉ Service through (a) the Artist's website interface provided at [www.callforentry.org](http://www.callforentry.org) and (b) the administrator website interface provided at <https://admin.callforentry.org>.

**4. Fees.** The following Fees apply to Client's access and use of the Software and CaFÉ Service for Access Term. By checking the box(es), Client elects to purchase the Package(s) for the one year Term, and accordingly, agrees to pay the corresponding use fees:

Check to select	Package	Number of calls	Use fee
<input type="checkbox"/>	Single Public Art Call	1	\$525.00
<input type="checkbox"/>	Two Public Art Calls	2	\$950.00
<input type="checkbox"/>	Concrete Package	3	\$1,290.00
<input type="checkbox"/>	Steel Package	5	\$2,100.00
<input type="checkbox"/>	Bronze Package	9	\$3,675.00
<input type="checkbox"/>	Copper Package	15	\$5,775.00

▶ All plans include **up to 250 applicants per call** and **up to 20 media samples\* per application**. (Only 6 of these 20 media samples may be in the form of audio or video files\*\*.)

\* Media Samples are defined as images, audio samples, video samples.

\*\* Can be any combination of audio and/or video files, not to exceed 6 total

#### Upgrade Option

Description	Fee per call
<b>Option A:</b> Accept an additional 100 artist profiles per call	\$150.00
<b>Option B:</b> Accept 2 additional media samples per call	\$200.00

[Check as applicable:] Client has elected to ☐ include or ☐ exclude an upgrade option as part of the CaFÉ Service. If included, then Client has agreed to purchase Upgrade Option(s) ☐ and accordingly, agrees to pay the corresponding use fees.

If client modifies the Upgrade Options during the Term, then client agrees to pay the corresponding use fees. If client excludes the Upgrade Options, and later modifies options or incurs applicants or media samples beyond the maximum allowed per call during the Term, then client agrees to pay the corresponding use fees.

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## **ATTACHMENT 2**

### **SET-UP AND SUPPORT**

**1. Set Up Services and Training.** WESTAF will provide the services necessary to assist and train Client to integrate Client's Contest related information with the Software and in the basic functioning of the Software and CaFÉ Service, consisting of standard training, web based documentation, and standard technical support (the "Set Up Services"). Client shall assign and have available a project coordinator and sufficient personnel to assist in the timely and orderly implementation of the Software. Standard training shall be provided to two of Client's personnel, in one joint session, which may or may not include representatives of other clients, shall be conducted through electronic communication and email support, or a combination of each as determined by WESTAF.

#### **2. Support.**

2.1 Standard technical support is provided Monday through Friday (U.S. national holidays excepted) from 9:00 a.m. through 5:00 p.m. Mountain Time (a "business day") and consists of email support and telephone support (within the U.S. and Canada) during the Term. Extended technical support will only be provided and arranged if mutually agreed by WESTAF and Client at WESTAF's then the-current standard rates.

2.2 WESTAF will respond to 90% of support requests received between 9:00 a.m. and 1:00 p.m. on the same business day and to 90% of support requests received between 1:00 p.m. and 5:00 p.m. on the next business day between 9:00 a.m. and 1:00 p.m. and will respond to all support requests no later than two business days of receiving a request.

2.3 Support is limited as follows: for a Software module, to one hour per business day, but no more than two hours per week and three hours per month for the first three months and thereafter to no more than one hour per day and two hours per month

2.4 Support does not include any on-site technical support or any assistance to the Client in its use and operation of the Software or any other aspect of the CaFÉ Service beyond those services included as part of WESTAF's standard set up services. Any additional services may be provided based on mutual scheduling between WESTAF and Client at WESTAF's then-standard rates and terms.

## ATTACHMENT 3 CLIENT INFORMATION FORM

CaFE@WESTAF.ORG | P (303) 629.1166 | F (303) 629.9717

### CONTACT INFORMATION

*Name of admin person who will be administering the call for entry in the CaFE™ system:*

Contact Name:			
Contact Organization:			
Contact Email:			
Contact Phone:			
Mailing Address:			
City:		State: <span style="border: 1px solid black; width: 10%; height: 20px;"></span>	Zip Code: <span style="border: 1px solid black; width: 20%; height: 20px;"></span>

*Name of billing person to receive Invoices, Statements, and Remittance Payments in the mail, (if different from above):*

Contact Name:			
Contact Organization:			
Contact Email:			
Contact Phone:		Fax: <span style="border: 1px solid black; width: 20%; height: 20px;"></span>	
Mailing Address:			
City:		State: <span style="border: 1px solid black; width: 10%; height: 20px;"></span>	Zip Code: <span style="border: 1px solid black; width: 20%; height: 20px;"></span>

### CALL FOR ENTRY INFORMATION (the "Contest")

Required – do not leave this section blank.

**Call Title:**   
*(A short name or title of the call for entry as it will appear on the CaFE™ website; no quotations, dashes, etc. We may revise if necessary.)*

**\*Application Deadline Date:**  **Jury Date(s):**  to  (May use TBD)  
*(Your application will automatically close at \*11:59:59 P.M. Mountain Time Zone. Rolling deadlines limited to 12 months.)*

**Entry Fee:**  You must add Additional Fees and Coupon Codes at the Product Editor, if any.

**Select the Jury Type** This will determine how entries are received and juried. *This cannot be changed after call opens.*

- 1) Are you jurying by art piece/work? ☐ Yes, each artwork sample will be individually scored. *(Including details & views.)*  
 2) Are you jurying by artist? ☐ Yes, each artist application will be scored as a whole.

**Media Requirements** Additional fees may apply; audio/video max limit is 6. *This cannot be changed after call opens.*

**Images:** Min qty  Max qty  **Audio:** Min qty  Max qty  **Video:** Min qty  Max qty

**Total Media Requirements to Apply** Min qty  Max qty  *(e.g., 1-3, or 8-8 total)*

### PAYMENT INFORMATION:

Payment upfront by credit card ☐

Payment upfront by check ☐

Payment must be made online using Visa/MC and processed by PayPal. If you are paying by check, include check payment along with signed contract. Delayed procurement payment may result in delayed processing.

For WESTAF Use Only | Licensee: PA One Year

FEE	AMOUNT
One Time Setup Fee	
App & Jury Module Fee	
Artist Profile Fee (over 250)	/
Image/Media Fee (over 20)	
License Effective Date START	/ /

Staff Initial: INVOICED \_\_\_\_\_ PAID \_\_\_\_\_ SETUP \_\_\_\_\_ ACTIVATED \_\_\_\_\_

PAYMENT	NOTES
Received   Awaiting   <b>NA</b>	
Received   Awaiting   Bill     N/A   Auto	
Received   Awaiting   Bill     N/A   Auto	
Received   Awaiting   Bill     N/A   Auto	
License Effective Date END	/ /

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## ATTACHMENT 4

### FINANCIAL TRANSACTION ASSISTANCE

Provided the Financial Transaction Assistance box is checked in Attachment 1, Client agrees to accept and pay for the following services from WESTAF for the collection and processing of payments with respect to its Contests as set forth in this Attachment (the "financial transaction assistance services") and WESTAF agrees to provide the financial transaction assistance services to Client with respect to Client's Contests as provided for in this Attachment. Undefined terms used in this Attachment have the meaning given to them in the Agreement (to which this Attachment is attached).

- 1. Service.** In order to facilitate Client's use of the Software, WESTAF will act as Client's collection agent as provided for in this Attachment for the purpose of collecting and remitting to Client all application, imaging, jurying and other fees due from the Artists who both submit applications to participate in the Client's Contests and make payment of the associated fees to Client through a credit card payment made by accessing the CaFÉ Service ("Eligible Entry Fee Payments").
- 2. Available Merchant Account.** All Eligible Entry Fee Payments shall be made, captured and credited to the Designated Merchant Account, as defined below, using the protocols and systems provided for by WESTAF as part of the CaFÉ Service. The Designated Merchant Account shall be a VISA or MasterCard merchant account maintained directly between WESTAF and a financial institution.
- 3. Agent Only.** WESTAF is acting as Client's limited agent in collecting Eligible Entry Fee Payments and has no obligation to undertake any effort to collect Eligible Entry Fee Payments other than, as part of the CaFÉ Service, to create and maintain protocols which are standard in the industry for the collection of credit card payments through web based software and, subject to the terms of this Attachment, to remit to Client all such payments which are captured through such protocols.
- 4. Term of Agency.** WESTAF shall act as Client's limited collection agent for the Term and, thereafter, only as agreed to between WESTAF and Client.
- 5. Ultimate Collection Not Guaranteed.** WESTAF promises to act in a commercially reasonable manner in acting as Client's limited collection agent and makes no promise, representation or warranty of collection or the collection of any actual Eligible Entry Fee Payment or any specific amount of such payments.
- 6. Charge Backs.** If an Eligible Entry Fee Payment is credited to the Designated Merchant Account and later, through no fault of WESTAF, the credit is reversed or a charge is made to the Designated Merchant Account because a previous credit for an Eligible Entry Fee Payment is disallowed (a "Charge Back"), then WESTAF shall have no obligation to remit the involved Artist Entry Fee Payment to Client or, if previously remitted to Client, shall have the right to charge future remittances due to Client in the amount of the involved Charge Back or, if no further remittances are due Client, to charge Client for the amount of the involved Charge Back which amount shall then be due and payable as other fees are due and payable under the Agreement.
- 7. Financial Transaction Assistance Fee.** For its services in acting as Client's limited collection agent and otherwise providing financial transaction assistance services, WESTAF shall be entitled to charge Client and withhold from remittances of Eligible Entry Fee Payments an amount equal to three and 25/100<sup>th</sup> percent (3.25%) of all Eligible Entry Fee Payments processed by WESTAF through the CaFÉ Service (the "Financial Transaction Assistance Fee"). ALL FEES AND THE FINANCIAL TRANSACTION ASSISTANCE FEE DUE TO WESTAF SHALL BE SET OFF BY WESTAF AGAINST THE ELIGIBLE ENTRY FEE PAYMENTS COLLECTED BY WESTAF AND IF NOT SET OFF AGAINST SUCH PAYMENTS SHALL BE DUE AND PAYABLE FROM CLIENT TO WESTAF AS OTHER FEES ARE DUE AND PAYABLE UNDER THE AGREEMENT.
- 8. Remittances.** WESTAF shall remit the net amount of the Eligible Entry Fee Payments collected to Client within 30 days of the close of the application period for Client's Contest, or sooner or more often if mutually agreed to in writing, by check or other means as mutually agreed to by Client and WESTAF. As used in this subparagraph, the "net amount of the Eligible Entry Fee Payments" means the gross amount of Eligible Entry Fee Payments collected by WESTAF during the remittance period, less any Fees then due WESTAF, the Financial Transaction Assistance Fee due with respect to the Eligible Entry Fee Payments being remitted and Charge Backs for that remittance period.

## **ATTACHMENT 5**

### **I. No Waiver of Sovereign Immunity**

Nothing contained in this Agreement is intended to serve as a waiver of the CITY's sovereign immunity as provided for in §768.28, Florida Statutes.

### **II. Public Records**

A. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law, as amended. Specifically, the Contractor shall:

1. Keep and maintain public records required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Contractor, or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

B. Failure of the Contractor to provide the above described public records to the City within a reasonable time may subject Contractor to penalties under 119.10, Florida Statutes, as amended.

### **PUBLIC RECORDS CUSTODIAN**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611  
[RecordsCustodian@copbfl.com](mailto:RecordsCustodian@copbfl.com)**

## ATTACHMENT 3

## CLIENT INFORMATION FORM

WESTAF | 1743 Wazee Street Suite 300 | Denver, Colorado 80202 | P (303) 629.1166 | F (303) 629.9717

## CONTACT INFORMATION

Name of admin person who will be administering the call for entry in the Cafe™ system:

Contact Name:	Laura Atria
Contact Organization:	The City of Pompano Beach
Contact Email:	Laura.atria@copbfl.com
Contact Phone:	9547864310
Mailing Address:	100 W. Atlantic Blvd.
City:	Pompano Beach
	State: FL
	Zip Code: 33060

Name of billing person to receive Invoices, Statements, and Remittance Payments in the mail, (if different from above):

Contact Name:	
Contact Organization:	
Contact Email:	
Contact Phone:	
Mailing Address:	
City:	
	State:
	Zip Code:

## CALL FOR ENTRY INFORMATION (the "Contest")

Required – do not leave this section blank.

<b>Call Title:</b>	(A short name or title of the call for entry as it will appear on the Cafe™ website; no quotations, dashes, etc. We may revise if necessary.)	
<b>*Application Deadline Date:</b>	Jury Date(s):	(Your application will automatically close at *11:59:59 P.M. Mountain Time Zone. Rolling deadlines limited to 12 months.)

Entry Fee: You must add Additional Fees and Coupon Codes at the Product Editor, if any.

Choose one Jury Type setting below to determine how the entries are received. This cannot be changed after call opens.

- 1) Are you jurying by art piece/work? ☐ Yes, each artwork sample will be individually scored. (Including details & views.) ☐ Yes, each artist application will be scored as a whole.
- 2) Are you jurying by artist? ☐ Yes, each artist application will be scored as a whole. ☐ No, each artist application will be scored as a whole.

Media Requirements Additional fees may apply; audio/video max limit is 6. This cannot be changed after call opens.

Images: Min qty Max qty Audio: Min qty Max qty Video: Min qty Max qty

## PAYMENT INFORMATION:

☐ Payment upfront by credit card ☐ Payment upfront by check

Upon return of this form, we'll email you an electronic invoice from Western States Arts Federation to be paid online.

For WESTAF Use Only   Licensee: MP PA ST DI O	Staff Initial: INVOICED PAID SETUP ACTIVATED	NOTES
FEE	AMOUNT	PAYMENT
One Time Setup Fee	Received   Awaiting   NA	
App & Jury Module Fee	Received   Awaiting   Bill   N/A   Auto	
Artist Profile Fee (over 250)	Received   Awaiting   Bill   N/A   Auto	
Image/Media Fee (over 20)	Received   Awaiting   Bill   N/A   Auto	
License Effective Date START	/ /	License Effective Date END