

## Agreement Upon Use of Zapplication® Web Based Software and Data Base

By clicking "Yes" to the "I AGREE" option in the Terms of Use dialog box, the user agrees that the following terms and conditions and those of the [General Terms of Service](#) and [Privacy Policy](#), as published and available on this site through the foregoing links, form an agreement between the user and ZAPP Software, LLC.

1. Certain Definitions. For purposes of this Agreement, the following definitions shall apply:

"Agreement" shall mean this Agreement as agreed to and accepted by the Artist's actions in clicking on the "I agree" option in the Terms of Use dialog box of the Zapplication® Software.

"Application" means the information requested by a particular Art Show concerning Artist's personal data and history, training, education, experience and work as an artist and which is submitted by the Artist to an Art Show through use of the Zapplication® Software.

"Artist" shall mean the individual user identified in the introductory paragraph of this Agreement as the person taking action to accept the terms of this Agreement.

"Artwork" shall mean the tangible works of art created by Artist, the copyright to which remains with the Artist, and which the Artist submits to an Art Show for consideration as part of Artist's Application under the terms of this Agreement.

"Database" shall mean the database of Applications and digitized Images of Artwork maintained on the website.

"Images" shall mean digitized images of the Artwork.

"Website" shall mean the site on the World Wide Web through which Artist last clicked to reach this Agreement and which is maintained under the Zapplication trademark for the submission of Applications and Images by artists for purposes of allowing artists to apply for and have their Applications and Artwork evaluated by an Art Show or an Art Show's jury for possible acceptance and granting of the right to participate and show Artwork at an Art Show.

"Zapplication® Software" means the web based software which is used in conjunction with the website.

2. Submission of Applications and Images. The Artist's submission of Images of Artwork and Applications to Art Shows through the Zapplication® Software shall, as between Artist and ZAPP LLC, be under and subject to the terms and conditions of this Agreement. The terms and conditions of Artist's submission of Images and Applications to Art Shows reached between Artist and the owner or sponsor of any Art Show shall not alter or in any way change the terms of this Agreement.

3. ZAPP's Limited Obligations. ZAPP LLC's obligation to Artist is to transmit and store Applications and Images as described in the Zapplication® Software. ZAPP does not verify the completeness or quality of Applications or Images.

4. Grant of Limited Rights; No Copyright Transfer. Artist hereby grants to ZAPP LLC a

nonexclusive license to use the Artwork and Images for the following limited purposes: (a) to permit ZAPP LLC to facilitate the transmission of or to actually transmit the Applications, together with submitted Images, to the owners and jurors of Art Shows to which Artist has submitted Applications and (b) for storage of Artist's Applications, together with submitted Images, in the non-public sections of the Database, subject to retrieval by the owners and jurors of Art Shows to which Artist has submitted Applications.

The limited rights and license granted under this Agreement do not include any assignment or transfer of the copyright in the Artwork and Images and do not include any right to otherwise reproduce, digitize, edit, modify, distribute, or publicly display the Artwork and Images, in whole or in part.

5. Artist's Representations. Artist represents and warrants to ZAPP LLC, that (A) the Artwork was created exclusively by Artist; (B) Artist is the sole owner of all rights in the Artwork; (C) by entering into this Agreement and submitting the Application and Images through the Zapplication® Software, Artist is not violating any agreement with any third party; and (D) the Artwork does not infringe upon any intellectual property, privacy, publicity, or other rights of any third party (the "Artist's Representations"). The Artist will provide ZAPP LLC with appropriate documentation which establishes Artist's Representations in the form reasonably requested by ZAPP LLC.

6. Return of Images. ZAPP LLC has no responsibility to Artist for the return of any Images submitted through the Zapplication® Software, nor for any Art Show's obligation to remove any Images from the website.

7. Artist's Limited Rights. By using the ZAPP Software and the website, Artist acquires no rights in the Zapplication® Software, the website and, except for Artist's Artwork and Images submitted as part of his or her Application, the content of the Database.

8. Duty of Care. ZAPP LLC will use reasonable efforts to control the security of the website, but does not warrant that the website will be able to protect Artwork and Images from infringement or piracy. Artist acknowledges that technological advances of those trying to break codes and encryption devices may outpace the technology of encryption and security and that there is no such thing as an absolutely secure website. The Artist further acknowledges that the publication of digitized data on the Internet necessarily makes it possible for Artwork to be copied in some form and for dishonest people to attempt to profit from that copying. Artist agrees that ZAPP LLC shall have no liability for any negligence or lack of due care in failing to protect the security of the website and Artist's rights in the Artwork and Images, but, subject to the other limitations of Section 9 of this Agreement, ZAPP LLC shall be liable for any gross negligence and intentional wrongdoing on its part with respect to the security of the website and the protection of the Artist's rights in the Artwork and Images.

9. Limitation of Liability. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE WEBSITE AND ZAPPLICATION® SOFTWARE ARE PROVIDED AS-IS AND WITHOUT ANY WARRANTIES. ZAPP LLC HEREBY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE WITH RESEPECT TO THE WEBSITE AND THE ZAPPLICATION® SOFTWARE. IN NO EVENT WILL ZAPP LLC BE LIABLE TO ARTIST FOR ANY INDIRECT, INCIDENTAL, PUNITIVE,

SPECIAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR OFFENDED MORAL RIGHTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ZAPP LLC, SHALL HAVE NO OBLIGATION TO PROTECT ARTIST'S MORAL RIGHTS, IF ANY, IN THE ARTWORK AND IMAGES. ARTIST'S SOLE REMEDY FOR ANY BREACH OF THIS AGREEMENT BY ZAPP LLC, FOR ANY UNAUTHORIZED PUBLICATION OF ARTWORK THROUGH THE WEBSITE AND FOR ANY OTHER CLAIMED HARM FROM USING THE ZAPPLICATION® SOFTWARE OR WEBSITE, WHETHER CAUSED OR ALLEGED TO BE CAUSED BY ZAPP LLC, SHALL BE ARTIST'S ACTUAL DAMAGES, IF ANY, SUBJECT TO A LIMITATION OF \$500 PER CLAIM OR \$2,500 IN THE AGGREGATE FOR ALL CLAIMS UNDER THIS AGREEMENT.

10. Indemnification. The Artist agrees to indemnify, defend and protect ZAPP LLC, for any cost and expense, including attorney's fees, incurred by as a result of any breach of the Artist's Representations.

11. Agreement Modifications. Modifications to and amendments of this Agreement shall only be made: (a) in a writing signed by both Artist and ZAPP, or (b) by ZAPP posting on the website a modified or amended form of this Agreement which is accepted by Artist. Artist's acceptance of any modified or amended form of this Agreement posted on the website by ZAPP shall be by Artist's action: (i) in clicking on an "I AGREE" option when offered on the website in relation to such modified or amended form of this Agreement, or (ii) in continuing to use the website and ZAPP® Software after such an amended or modified form of the Agreement has been posted on the website by ZAPP.

12. Governing Law; Dispute Resolution. This Agreement shall be governed by the laws of the state of Colorado, excluding its conflict of law principles. Except as provided in the following sentence of this Section, any claim, dispute or controversy arising out of or relating to this Agreement shall be submitted by the parties to binding arbitration in accordance with the commercial rules of the American Arbitration Association, to be held in Denver, Colorado, by a single arbitrator who shall be a lawyer with at least five years of experience in intellectual property law or online e-commerce law. Nothing in this Section shall be deemed as preventing either party from seeking equitable relief from the courts as necessary to protect its name, copyrights, proprietary information, trade secrets, or any other appropriate provisional remedy prior to or pending the outcome of any arbitration proceeding. Judgment on an arbitration award may be entered in any court having jurisdiction thereof. The parties shall be entitled to standard discovery as provided for in the Colorado Rules of Civil Procedure. The cost of arbitration shall be borne equally by the parties.

13. Liberal Construction. This Agreement is between commercially sophisticated parties and may not be construed and interpreted for or against either party. Each party is aware that each is free to seek independent professional guidance or legal counsel regarding this Agreement. Each party has either sought such guidance or legal counsel or decided, after reviewing the Agreement carefully, to waive such right. The limited rights and license granted under this Agreement do not include any assignment or transfer of the copyright in the Artwork and Images and do not include any right to otherwise reproduce, digitize, edit, modify, distribute, or publicly display the Artwork and Images, in whole or in part.