

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This **Confidentiality and Non-Disclosure Agreement (the "Agreement")**, dated this, the ____ day of _____, 202__ ("Effective Date"), is entered into by and between **Storm King Art Center**, a New York 501(c)3 corporation having an address at 1 Museum Road New Windsor, NY 12553 ("Storm King"), and _____, [an individual / a corporation] having [offices at / an address at] _____ ("Contractor"). Storm King and Contractor may be referred to individually as a "Party" and collectively as "the Parties."

WHEREAS, in the course of Contractor's association with Storm King, Contractor may from time to time become aware of, be granted access to, or otherwise have possession or knowledge of Storm King's Confidential Information (as defined below); and

WHEREAS, Storm King will allow such access, possession, or knowledge only if its Confidential Information is protected pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein and Contractor's continued employment, contractual, or volunteer relationship with Storm King, the sufficiency of which is hereby acknowledged, **the Parties agree as follows:**

1 Not an Employment Agreement. This Agreement is not an employment agreement and is concerned only with the subject matter described below.

2 Definitions:

2.1 "**Confidential Information**" means all non-public or proprietary information as described below, in any form (whether written, oral, recorded, electronic, magnetic, or any other manner), belonging to Storm King, or a third party (including but not limited to Storm King's agents, consultants, suppliers, artists, dealers, and professional advisors (each and together "Storm King Third Parties")), which is furnished or which becomes known to Contractor as a consequence of Contractor's association or relationship Storm King or a Storm King Third Party. Confidential Information shall at all times be the sole property of Storm King. For the purposes of this Agreement, Confidential Information is:

- 2.1 (a) non-public information concerning or related to Storm King's know-how, designs, diagrams, conservation reports and assessments, inventions, and unpublished research;
- 2.1 (b) information concerning or relating to business plans; strategy; and pending projects and proposals including acquisitions, loans, sculpture moves, deaccessioning, and upcoming exhibitions;
- 2.1 (c) information concerning or relating to Storm King's business operations including: costs and expenses, assets, insurance coverage and values, donations, gifts, sales, attendance, non-public financial information;
- 2.1 (d) relationship, research, contact information and nature and quantum of support of current, former, or potential artists, artist representatives, trustees, donors, members, or contributors;
- 2.1 (e) information concerning the assessments, strengths, weaknesses and skills; and the personal tax, contact, banking, health care, and similar personal information of current, former, proposed, or prospective employees;
- 2.1 (f) information protected by Storm King's contractual confidentiality obligations as notified to Consultant;
- 2.1 (g) information related to technological data, particularly hardware used on site, network architecture, software on the network, and network access systems, methodologies, and credentials; and
- 2.1 (h) any other information not known to the public which, if misused or disclosed, could reasonably be expected adversely to affect Storm King's business, functions or operations.

2.2 Confidential Information does not include information or data which is:

- 2.2 (a) Already known to or otherwise in the possession of the Contractor without any confidentiality obligation at the time of disclosure by Storm King; or

- 2.2 (b) Publicly available, or otherwise in the public domain, without violation of any confidentiality obligation, prior to disclosure by Storm King; or
- 2.2 (c) Properly obtained by Contractor from any third party without restriction and without breach of any confidentiality obligation by either the Contractor or such third party to Storm King or any other entity.

“Proper Recipient” is an individual or entity receiving or given access to Confidential Information where (i) that individual or entity is subject to a non-disclosure or confidentiality agreement with Storm King, and (ii) the Confidential Information is: necessary to the individual or entity to perform a legitimate business function for or service to Storm King; limited only to that information which is needed; and transferred or accessed in a way that protects the Confidential Information from inadvertent disclosure. Contractor may, with prior written permission by Storm King’s Counsel, provide Storm King Confidential Information to a Proper Recipient.

- 2.3 Notwithstanding the foregoing, Contractor, acting within the narrowly defined scope of the applicable statement of work, may disclose Confidential Information provided that: the recipient is made aware and acknowledges that the information to be disclosed is Storm King Confidential Information; that the disclosure is limited to directly applicable Confidential Information; and that a timely record of having disclosed Confidential Information is made by the Contractor in a written form and communicated to Contractor’s project manager.
- 2.4 Neither Storm King nor Contractor’s former employees shall not be Proper Recipients, except where disclosure is authorized in writing by Storm King’s Counsel.
- 3 Term and Termination: This Agreement shall be valid from the date first written above and shall terminate on the later of five years from (i) the termination or expiration of an agreement for the provision of services, (ii) the last provision of a service to Storm King, or (v) the date first written above.
- 4 Confidentiality:
 - 4.1 Except as provided in this Agreement, Contractor shall not use or disclose Confidential Information except as provided herein.
 - 4.2 Contractor may not make use of any Confidential Information for Contractor's own purposes or for the benefit of anyone other than Storm King.
 - 4.3 Contractor shall not seek access to any Confidential Information not required to fulfill their legitimate business functions.
 - 4.4 Contractor shall not disclose to any third party, including a Storm King Third Party, the terms of this Agreement.
- 5 Required Disclosure: If a court, administrative body, or government agency of competent jurisdiction a requires the disclosure by Contractor of Confidential Information, to the extent legally permitted to do so, Contractor shall promptly notify Storm King prior to disclosing Confidential Information and shall cooperate with Storm King if Storm King elects to legally contest, request confidential treatment, or otherwise avoid such disclosure.
- 6 No license: Nothing in this Agreement shall be construed as granting the Contractor whether expressly, by implication, estoppel, or otherwise, any license or any right to use any Confidential Information received from Storm King, or use any patent, trademark, copyright, or any other intellectual property right, now or hereafter owned or controlled by Storm King without express prior written permission.
- 7 Storage of Confidential Information: All Storm King Confidential Information shall be stored in at least as secure a manner as Contractor’s similar information. For electronic Confidential Information, this includes but is not limited to: complex password protected, MFA, or biometric access to all electronic

devices; at least monthly software updates; network intrusion protection; instant-update firewall and anti-virus software; remote access encryption; and closed port by default systems; For physical Confidential Information, this shall include but not be limited to: physical site access controls and internal controls to prevent inadvertent staff or visitor disclosure.

- 8 Return of Confidential Information: At any time and for any reason, Storm King may demand the return of any Confidential Information under Contractor's control. Upon termination of services, Contractor shall return all physical Storm King Confidential Information to Storm King Counsel and permanently delete all electronic Confidential Information. Storm King may require written certification that no further Confidential Information is possessed or controlled by Contractor.
- 9 Notice. Should Contractor know of or reasonably suspect that a breach of Storm King's Confidential Information has or may occur, whether by Contractor, other Contractors, Storm King Third Parties, or any other third party, Contractor shall immediately notify Storm King Counsel or the Chair of the Board of Trustees.
- 10 Governing Law: This Agreement shall be subject to, and construed in accordance with, the laws of the State of New York. Parties agree that the scope of coverage is clear and appropriately tailored to the services. The Parties agree that any and all causes of action between the Parties arising under this Agreement shall be brought exclusively in the state or federal court districts of New York City. Any provision of this Agreement which is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable shall not affect the validity of any other provision hereof, and this Agreement shall be deemed to be amended as necessary to delete such illegal, invalid, or unenforceable provision in order to achieve the intent of the Parties which is to protect disclosure of information of the nature described above.
- 11 Breach: Contractor understands and agrees that Confidential Information is disclosed in reliance upon the terms of this Agreement. Any breach of any provision hereof by Contractor may cause irreparable harm and damage to Storm King. Contractor hereby expressly agrees that Storm King shall be entitled to seek the remedies of injunction, specific performance, and other equitable relief to prevent a breach of any provision of this Agreement. The provisions of this Section 11 shall not be construed, however, as a waiver of any other rights that Storm King may have for damages or other relief.
- 12 Assignment: This Agreement may not be assigned. This Agreement shall be binding upon the Parties and upon their respective legal representatives, successors and permitted assigns. Any assignment or transfer in violation of this section shall be void.
- 13 Entire Agreement: This Agreement (a) contains the entire understanding between the Parties with respect to Confidential Information, (b) supersedes all prior communications and understandings with respect thereto, whether written or oral, and (c) may not be modified in any manner, except by written amendment duly executed by the authorized representatives of each of the Parties hereto.
- 14 **CONTRACTOR DECLARATION: CONTRACTOR, BY EXECUTING THIS AGREEMENT:**
 - **ACKNOWLEDGES AND UNDERSTANDS THAT THIS IS A LEGAL DOCUMENT;**
 - **ACKNOWLEDGES THAT THEY HAVE READ AND UNDERSTOOD ALL OF THE TERMS OF THIS AGREEMENT AND HAVE HAD THE OPPORTUNITY TO CONSIDER, ASK QUESTIONS, DISCUSS, AND CONSULT COUNSEL AS APPROPRIATE;**
 - **AGREES THAT ALL OF THE RESTRICTIONS SET FORTH HEREIN ARE FAIR AND REASONABLY REQUIRED TO PROTECT STORM KING'S LEGAL AND BUSINESS INTERESTS;**
 - **AGREES THAT STORM KING MAY NOTIFY ANY FUTURE OR PROSPECTIVE EMPLOYER OF CONTRACTOR, OR THIRD PARTY, OF THE EXISTENCE OF THIS AGREEMENT, AND SHALL BE ENTITLED TO FULL INJUNCTIVE RELIEF AND ANY OTHER LEGAL REMEDIES AVAILABLE FOR ANY BREACH.**

IN WITNESS WHEREOF THE PARTIES HAVE ENTERED INTO THIS AGREEMENT EFFECTIVE AS OF THE DATE FIRST SET FORTH ABOVE.

STORM KING ART CENTER

Signature

Anthony Davidowitz
Deputy Director Operations, Administration,
and Legal Affairs

Date

Signature

[NAME]
[TITLE]

Date