

# Sample Service Agreement

## Service Agreement

Service Agreement entered into as of the \_\_ day of \_\_\_\_\_, 2016 (the "Effective Date") between the Philadelphia Museum of Art, a charitable non-profit Pennsylvania corporation located at P.O. Box 7646, Philadelphia PA 19101 ("PMA"), and [NAME OF HOST], a [\_\_\_\_\_] [corporation] located at [ADDRESS] ("Host").

In consideration of the mutual covenants set forth herein, Host and PMA hereby agree to the terms and conditions set forth below and attached Exhibits (collectively, the "Agreement").

1. Description of Services: Host shall provide the following "Services" for the Art Information National Digital Stewardship Residency (the "Project"):
  - (a) in March-April 2017, collaborate with PMA to select a resident (the "Resident") in accordance with the "Resident Selection Policy" in Exhibit A;
  - (b) hire the Resident as a full-time contract employee for the period from July 2017 to July 2018 to work on a project described in Exhibit B (the "Residency Project") pursuant to a contract to be approved by PMA, which approval shall not be unreasonably withheld. In connection with such approval, Host shall provide PMA with a summary of benefits (the "Benefits") to be provided by Company to the Resident in accordance with Company's customary employment arrangements (which shall be consistent with all applicable federal and state wage and hour, employment and other laws);
  - (c) pay the Resident a bi-weekly stipend of \_\_\_\_\_ dollars (\$\_\_\_\_) or monthly stipend of \_\_\_\_\_ dollars (\$\_\_\_\_) in accordance with Company's customary employment arrangements;
  - (d) designate at least one full-time staff member (a "Mentor") to commit approximately two (2) hours per week over twelve (12) months on average to support the Project and the Resident;
  - (e) send at least one (1) Mentor to attend Curriculum Development Week with the Resident in Philadelphia from July 24-28, 2017; the ARLIS/NA Annual Conference in New York City; and related professional development activities as required by the program;
  - (f) facilitate a symposium and graduate activities in concert with local ARLIS/NA members;
  - (g) cause the Mentor to participate in a formal professional review with the Resident halfway through the residency (in January 2018);
  - (h) cause the Mentor to participate in a formal professional review with the Resident at the end of the residency (in [July 2018]); and
  - (i) cause the Mentor to contribute to an evaluation of the residency, conducted by an independent third-party reviewer selected by PMA, at the conclusion of the Project (July 2018);
  - (j) provide the Resident with adequate space, supplies, and equipment required for successful completion of the Project, including, without limitation, a computer, any required software and hardware, any necessary training, and required storage space; and
  - (k) render such other services reasonably requested by PMA in connection with the Project.
2. Term: Company shall render the Services from the Effective Date through the end of the Resident's contract employment for the Residency Project, which will be on [DATE] (the "Term").

# Sample Service Agreement

## Service Agreement

3. **Delivery Schedule:** Company shall submit the offer of contract employment to the Resident by no later than April 24, 2017. Company shall provide PMA with a copy of the offer, along with a summary of Benefits to be provided by Company to the Resident in accordance with Company's customary employment arrangements and applicable law. All other Services shall be rendered in accordance with the schedule otherwise set forth herein and in the description of the Residency Project referred to in Paragraph 1 above.
4. **Compensation:** Subject to Company's fulfillment of its obligations hereunder and as full compensation therefor, PMA shall pay Company, and Company shall accept as full compensation, the sum of forty-thousand Dollars (\$40,000) which shall cover the Resident's salary, the "Fee". PMA shall pay the Fee to Company within fifteen (15) business days after PMA's receipt of invoice. Company agrees to be fully and solely responsible for the payment and withholding of any and all applicable taxes, as well as providing benefits for the Resident. Notwithstanding the foregoing, PMA and Company acknowledge that the principal source of funds for the Fee comes from payments made to PMA by the Institute for Museum and Library Services, a federal agency. If such federal agency fails to make payments to PMA so that PMA is unable to pay the full amount of the payments as provided herein, then PMA shall provide Company with written notice thereof (the "Funding Notice"). Following receipt of the Funding Notice, PMA and Company shall enter into good faith negotiations to modify this Agreement with respect to the Fee, the Payment Schedule, delivery obligations, and other terms as necessary to accommodate any resulting shortfall in the Fee. However, in the event that good faith negotiations fail to result in mutually agreed written revisions to the Fee, the Payment Schedule, delivery obligations and other relevant terms in this Agreement, PMA's sole financial obligation to Company pursuant to this Agreement shall be to pay and/or reimburse Company as provided herein only for actual approved expenses contractually committed, or costs incurred, prior to the date of Company's receipt of the Funding Notice, which shall in no event exceed the Fee.
5. **PMA Representative:** Kristen Regina, Karina Wratschko, or their designee(s) (the "PMA Representative").
6. **Performance of Services:** Company shall (a) render the Services in a professional manner in accordance with specifications furnished by the PMA Representative; (b) report to and be available to consult with the PMA Representative on a regular basis regarding the Project; (c) keep true and accurate records of all expenditures, sufficient in detail to facilitate an effective audit, and in accordance with generally accepted United States accounting principles ("US GAAP") and with the requirements outlined in the United States Office of Management and Budget ("OMB") Circular A-110. Company shall maintain its general ledger and other records in sufficient detail to account for project level activities and which will provide an audit trail enabling PMA and/or federal funding agencies to verify the investment of the Fee and to confirm that such funds were applied in a manner consistent with this Agreement. PMA shall have the right to examine and

# Sample Service Agreement

## Service Agreement

audit pertinent books, documents, papers, and records of Company involving transactions or duties undertaken by Company related to the Services upon reasonable notice to Company of not less than 5 business days: (i) during the Term of Services; and (ii) for a period of eight (8) years after completion of the Services.

7. Relationship of Company and PMA: Company and PMA are independent contractors with respect to each other, and nothing herein shall create any partnership, joint venture, or agency relationship between Company and PMA. Company acknowledges and agrees that Company and its employees are not employees of PMA for any purpose relating to this Agreement, including, without limitation, for purposes of eligibility to participate in or receive benefits under any employee benefit plan, program or arrangement maintained or contributed to by PMA.
8. Credit: Subject to Company's fulfillment of its obligations hereunder, PMA shall provide Company with a credit in connection with the Project as PMA reasonably determines after consultation with Company, which credit shall be the same as the credit provided to any other party that renders substantially similar services to PMA for the Project (i.e., serves as host for a NDSR resident). No casual or inadvertent failure of PMA or others to comply with the provisions of this paragraph shall constitute a breach by PMA of this Agreement.
9. Promotion: Company authorizes PMA and other persons and entities designated by PMA to use Company's name, trademark and/or logotype, and biographical material in such manner as it may determine for promotional purposes. Company shall not use the name, logo or other identifier of PMA without PMA's prior written consent.
10. Termination:
  - (a) PMA shall have the right to terminate this Agreement at any time, with or without cause, upon written notice to Company.
  - (b) In the event PMA terminates this Agreement pursuant to this Paragraph 11:
    - (i) PMA reserves all rights and remedies it may have, including the right to complete the Services;
    - (ii) Company agrees to deliver to PMA, within three (3) days of notice of termination, (A) a detailed accounting of Company's expenses incurred and commitments made prior to termination and (B) all materials prepared, produced, acquired, licensed or otherwise obtained or created by Company in connection with the Services or this Agreement;
    - (iii) PMA agrees to pay Company for authorized work completed prior to termination upon receipt and approval of substantiated invoices, provided however that PMA shall be entitled to deduct from such payment all actual costs and damages (e.g., outside attorneys' fees), if any, it incurs as a result of such termination. Company agrees that such payment shall constitute the sole obligation of PMA to Company. In no event shall such payment exceed the Fee set forth in The Schedule. Upon such payment, PMA shall have no further obligations or liabilities to Company hereunder. Company shall promptly repay to PMA all monies, if any, previously paid to Company by PMA not properly attributable to work performed prior to termination; and

# Sample Service Agreement

## Service Agreement

(iv) all representations, warranties, and defense/indemnification obligations, and all other provisions that, by their nature, may extend beyond the term of this Agreement by implication, shall survive the termination of this Agreement.

### 11. Representations, Warranties, and Indemnities.

(a) Company represents and warrants that:

(i) it has the legal right and authority to enter into this Agreement and to observe and perform fully its obligations set forth herein, that the performance hereunder and the rights it has granted herein will not conflict with or violate any commitment, agreement, or understanding it has or will have to or with any person or entity;

(ii) the exercise by PMA or its designees of the rights granted in this Agreement shall not violate or infringe upon the rights of any person or entity whatsoever, or create any liability of any kind;

(iii) it shall comply with all applicable federal, state, and local laws, rules, and regulations relative to the Project;

(iv) it has complied fully with laws and regulations prohibiting discrimination against any person on the basis of race, color, religion, national origin, age, gender, sexual orientation, veteran or military status, or physical or mental handicap; and it has complied with the Equal Employment Opportunity Act (30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p. 339), as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor;" and

(v) with regard to Conflict of Interest: it has disclosed any direct or indirect financial interests that any PMA employee has in Company; and

(vi) during the term of services required to be performed hereunder it shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption as may be applicable.

(b) Company expressly agrees that any and all representations and/or warranties made by Company herein are material for any and all of the purposes hereof.

(c) Company shall defend (with counsel reasonably acceptable to PMA and its insurance company), indemnify, and hold harmless PMA, and its officers, trustees, directors, agents, designees, assignees, grantors, and employees from and against all claims, alleged claims, actions, losses, costs, expenses, settlements, demands, and liabilities of every kind, including reasonable attorneys' fees and expenses, arising out of or incurred by reason of the inaccuracy, alleged breach, or actual breach of any representation, warranty, covenant, agreement, or undertaking made by Company herein, or involving any matter in connection with the Project caused by Company or under Company's control or the duplication, distribution, exhibition, promotion, or advertising of the Project by PMA or its designees in the manner specified in this Agreement. Company shall, at its sole cost and expense, dispose of any such claim or demand or defend against any such action. PMA, at its option, shall have the right, at its sole cost and expense, to participate in the defense of any such action and to be represented by counsel of PMA's selection. PMA shall give Company prompt notice of the assertion of any claim

# Sample Service Agreement

## Service Agreement

or the institution of any action that may expose either party to liability under this Agreement and shall provide reasonable cooperation in the defense of any claim asserted against it. This indemnity shall not apply to, and Company shall have no liability for any materials furnished by PMA.

(d) PMA represents and warrants that it has the legal right and authority to enter into this Agreement and to observe and perform fully its obligations set forth herein, and that its performance hereunder will not conflict with or violate any commitment, agreement, or understanding it has or will have to or with any other person or entity.

(e) PMA expressly agrees that any and all representations and/or warranties made by PMA herein are material for any and all of the purposes hereof.

(f) PMA shall defend (with counsel reasonably acceptable to Company and its insurance company), indemnify, and hold harmless Company and its officers, directors, agents, and employees from and against all claims, alleged claims, actions, losses, costs, expenses, settlements, demands, and liabilities of every kind, including reasonable attorneys' fees and expenses, arising out of or incurred by reason of the inaccuracy, alleged breach, or actual breach of any representation, warranty, covenant, agreement, or undertaking made by PMA herein, or involving any matter in connection with the Project caused by PMA or under its control. PMA shall, at its sole cost and expense, dispose of any such claim or demand or defend against any such action. Company, at its option, shall have the right, at its sole cost and expense, to participate in the defense of any such action and to be represented by counsel of Company's selection. Company shall give PMA prompt notice of the assertion of any claim or the institution of any action that may expose either party to liability under this Agreement and shall provide reasonable cooperation in the defense of any claim asserted against it.

12. Force Majeure: If Company is prevented from completing the Services by reason of act of God, fire, flood, delay in transportation, lockout, strike or other labor dispute, riot or civil disorder, war, whether war has been declared or not, or armed insurrection, enactment, rule, act or order of government, public disaster, mechanical failure, or any other force majeure event, cause, condition, or reason demonstrably beyond Company's reasonable control, then such delay, if it does not exceed thirty (30) days in the aggregate, shall not constitute a material breach of this Agreement; provided that Company shall have notified PMA of such force majeure event, in writing, setting forth the reason for the delay and the new delivery date.

13. Miscellaneous:

(a) Nothing contained herein shall be taken to imply that PMA will not enter into or cannot enter into other agreements for the Project.

(b) Company shall, at any time at the request of PMA, execute any further documents or do any acts consistent with the terms and conditions set forth herein which PMA may reasonably consider necessary for more effectively vesting in or conferring to PMA the rights referred to in this Agreement or otherwise for the purpose of carrying into effect this Agreement and any of the arrangements intended to be made hereby. Without limiting the foregoing, if any additional government funding (federal, state, or city) is allocated to the Agreement after execution, the parties shall amend the Agreement accordingly and comply with all applicable requirements.

# Sample Service Agreement

## Service Agreement

(c) The parties shall notify each other in writing in the event that either deems any provision of this Agreement to be breached and shall give the other party thirty (30) business days to cure such breach before taking action pursuant this Agreement or otherwise. Under all circumstances, Company's remedy shall be limited to damages, if any. In no event shall Company have the right to terminate or rescind this Agreement or in any way enjoin or interfere with the publication, exhibition, production, advertising, promotion, or exploitation of the Project by IMLS, PMA, or their designees in the manner set forth herein.

(e) The rights under this Agreement may not be assigned by Company and the duties and obligations of this Agreement may not be delegated by Company without the prior written consent of PMA. Any assignment or delegation made without such consent shall be void.

(f) This Agreement is complete and embraces the entire understanding between the parties. All prior understandings in connection with the subject matter herein contained, either oral or written, are null and void unless expressly set forth herein. No alteration, modification, or waiver, in whole or in part, of any provision of this Agreement shall be of any effect unless set forth in writing and signed by both parties hereto. A waiver by either party of any breach or default by the other party shall not be construed as a waiver of the same or any other breach or default by such party.

(g) Any notice sent pursuant to this Agreement ("Notice") shall be in writing and delivered to the other party (and in the case of notice to PMA with a copy delivered to "General Counsel") at the addresses first stated above. Delivery of Notice shall be made with a requirement of evidence of delivery or attempted delivery and shall be sent by courier or U.S. Postal Service, in each case with postage or fees prepaid. Notice also may be given by facsimile or email (if provided), provided that a copy is sent contemporaneously via the delivery methods stated above. Notice shall be sent and deemed given upon delivery or attempted delivery.

(h) All rights and remedies granted to PMA hereunder are cumulative and shall be in addition to any other rights or remedies which PMA may have at law or in equity.

(i) Company shall comply with all applicable federal, state and local laws and regulations pertaining to protecting privacy and personal information.

(j) Except as may be required in connection with filings with governmental agencies or courts, or except as may be required under applicable law, Company shall not disclose to any third party, except on a need to know basis to its accountants, advisors, banks and trustees, all of whom shall agree to keep confidential any information they so obtain, any information obtained by Company from PMA or disclosed and/or delivered to Company by PMA and which relates to the Project and/or PMA's past, present or future research, development, product procedures, objectives, techniques and business activities, except for publicly disclosed information.

(k) If any provision of this Agreement shall be held void, voidable, invalid, or inoperative, no other provision of this Agreement shall be consequently affected, and accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid, or inoperative provision had not been contained herein.

# Sample Service Agreement

## Service Agreement

(m) This Agreement may be executed in one or more counterparts, and when so executed shall constitute a binding Agreement. Execution may be by original or electronic signature, which may be relied upon and effective as though, an original signature.

ACCEPTED AND AGREED TO as of the date first set forth above:

PHILADELPHIA MUSEUM OF ART

---

Timothy Rub  
Director

[COMPANY]

By: \_\_\_\_\_

[Name]  
[Title]

# Sample Service Agreement

## Exhibit A

### **Resident Selection Policy**

Applications for Residents for the National Digital Stewardship Residency for Art Information Professionals Program will be solicited by PMA from the period of October 2016 through February 2017. As part of their application packages, residents will provide an application form, cover letter, and two letters of reference. Optionally, they will submit a short video to demonstrate their interest in the Residency and/or additional cover letters expressing their interest for each specific project. Following the close of the Resident application period, PMA will provide hosts with the completed application packages for those Residents who meet the minimum qualifications to participate in the Residency. These qualifications include the receipt or expected receipt of a Master's-level degree (or higher) between the dates of January 2015 and June 2017 and the completion of all elements of the application package. The hosts will then collaborate with the PMA to identify, interview and select the best-qualified Resident to complete the project out of the applications received.

Residents must be considered without regard to race, color, religion, national origin, sex, sexual orientation, age, disability, veteran status, or other characteristics protected by law.