



**AGREEMENT BETWEEN THE NEW YORK PUBLIC LIBRARY, ASTOR,
LENOX AND TILDEN FOUNDATIONS
AND THE ARTIST ARCHIVE**

AGREEMENT between the New York Public Library, Astor, Lenox and Tilden Foundations, a New York not-for-profit education corporation with an address at 445 Fifth Avenue, New York, New York 10016 (“NYPL” or “the Library”) and The Artist Archive, 46-12 Vernon Boulevard, Long Island City, NY 11101, (“Service Provider”) (together with NYPL, the “Parties”; each, a “Party”), this 31st day of August 2015.

WHEREAS, the Library wishes to use its resources to further educational opportunities for children residing in the neighborhoods of its various branches; and

WHEREAS, Service Provider is an organization, with the skill and expertise to provide educational enrichment programs for children; and

WHEREAS, the Library wishes to engage the services of the Service Provider to design and implement programs as part of a broader initiative to provide educational programming for children in the various Library branches, and the Provider wishes to participate in such initiative;

NOW, THEREFORE, the Parties agree as follows:

1. SCOPE OF SERVICES

Service Provider agrees to provide the services described in Schedule A hereto attached (such services are referred to herein as the “Services”).

2. COMPENSATION

For full performance of the Services, NYPL agrees to pay Service Provider in accordance with the payment schedule set forth in Schedule A-1 hereto attached after each of the Services have been successfully performed to NYPL’s satisfaction. If applicable all invoices must reference a NYPL Purchase Order Number. NYPL shall exercise reasonable efforts to pay invoices under this contract within twenty (20) days after each such invoice is received and approved by NYPL.

The fee described in Schedule A-1 shall be Service Provider’s sole compensation for this service.

3. INDEPENDENT SERVICE PROVIDER STATUS; TAXES

A. It is understood that Service Provider shall be an independent contractor, and neither Service Provider nor any employee of Service Provider shall be, or shall be deemed to be, an employee of NYPL. Neither Service Provider nor any employee of Service Provider shall have authority to act as an agent of NYPL, except on authority specifically so delegated, and neither Service Provider nor any employee of Service Provider shall represent to the contrary to any person. Service Provider shall only consult, render advice and perform such tasks as Service Provider determines are necessary to achieve the results specified by NYPL. Service Provider shall not direct the works of any employee of NYPL, or make any management decisions, or undertake to commit NYPL to any course of action in relation to third persons. Although NYPL may specify the results to be achieved by Service Provider and exert control and direction in that regard, NYPL shall not control or direct Service Provider as to the details or means by which such results are accomplished.

B. It is intended that the fees if any paid hereunder shall constitute revenues to Service Provider. To the extent consistent with applicable law, NYPL will not withhold any amounts from such fees as federal income tax withholding from wages or as employee contributions under the Federal Insurance Contributions Act or any other state or federal laws. Service Provider shall be solely responsible for the withholding and/or payment of any federal, state or local income or payroll taxes with respect to Service Provider, its employees, agents or representatives.

4. INSURANCE

A. Service Provider agrees to purchase and maintain in force, at its own expense (including the payment of all deductibles) and for the duration of the period during which the Services are rendered, the following policies of insurance with the following minimum limits of coverage and in accordance with the following terms:

- Workers' compensation insurance and statutory disability insurance as required by the laws of the State of New York for all persons employed in connection with the project, including, as a minimum, employer's liability limits of \$500,000 each accident/\$500,000 each employee for bodily injury or by disease/\$500,000 policy limit, with coverage (except for disease) ;
- Commercial general liability insurance (which may be basic and umbrella coverage) with respect to injuries and death to persons and/or damage to property, written on an "occurrence" basis, naming the City of New York and The New York Public Library, Astor, Lenox and Tilden Foundations and its Trustees, officers, agents and employees as additional insureds, with a combination single limit of not less than \$1,000,000;
- Commercial umbrella/excess insurance in an amount not less than \$4,000,000;
- Sexual abuse and molestation insurance in amount not less than \$3,000,000.

B. Service Provider is required to deliver to The New York Public Library, Office of Procurement and Risk Management, attn: Risk Manager, 445 Fifth Avenue, New York, NY 10016, certificates of insurance evidencing the above coverage, naming the City of New York and The New York Public Library, Astor, Lenox and Tilden Foundations and its Trustees, officers, agents and employees as additional insureds (with respect to general liability, automobile liability and umbrella insurance and with the exception of workers' compensation) and containing a waiver of subrogation by insurer with respect to NYPL and the above-referenced additional insureds (with respect to general liability, automobile liability, professional liability, umbrella), ten (10) days prior to commencement of this agreement. All coverages will be primary non-contributory basis. All required insurance shall be evidenced by valid and enforceable policies issued by a company with an A.M. Best rating of at least A-VII and licensed to do business in New York and an agreement by the insurer that such policy shall not be cancelled or amended or any coverages reduced without at least thirty (30) days' prior written notice to NYPL.

C. These policies shall be considered primary insurance vis-a-vis any other valid and collectible insurance NYPL may possess, and any other insurance NYPL does possess shall be considered excess insurance only.

D. Service Provider must include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

E. All liability insurance provided by Service Provider shall be in effect at all times during the period during which the Services are being rendered. Failure to maintain required policies may result in termination of the agreement. Each insurance policy required by these provisions shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to NYPL at the address specified in Section 4(B) above. Service Provider agrees to indemnify the Library for any applicable deductible.

5. RELEASE AND AUTHORIZATION

A. Service Provider and each of its employees, volunteers, and interns involved in performing the Services hereby release, forever discharge, save and hold harmless the Library, its Trustees, directors, officers, agents, volunteers, interns and employees as well as the City of New York (collectively, the "Released Parties") from and against any and all claims of any nature or kind which they now have or which may hereafter accrue against the Released Parties in connection with the Services.

B. Service Provider and each of its employees, volunteers, and interns involved in performing the Services hereby authorize the Library: (i) to use their respective names, biographies, and likenesses in connection with publicizing the Services, and (ii) to record their performance(s) and to use such recordings without limitation in perpetuity throughout the universe (either in audio-only format or in audiovisual format) in any and all media, on the Library's website, on third party websites, and otherwise.

6. REPRESENTATIONS AND WARRANTIES; COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS, RULES, AND STANDARDS

A. Service Provider represents and warrants that: (i) it has the right and power to enter into and fully perform its obligations under this agreement, and (ii) none of the materials delivered to NYPL hereunder (if any) in connection with the Services shall violate the rights of any third party.

B. Service Provider shall comply with all federal, state and local laws and regulations applicable to its performance of its obligations hereunder, including but not limited to, employment and purchasing practices, wages, hours and conditions of employment. In addition, Service Provider agrees to comply with all applicable government funding requirements.

C. In rendering the Services, Service Provider shall comply with all applicable federal, state and local laws, rules and regulations pertaining to equal employment opportunity and shall not discriminate based on age, ethnic group, color, gender, marital or partnership status, medical condition, national origin, physical or mental disability, race, religion, or sexual orientation.

D. Service Provider shall comply with all applicable federal, state and local laws, rules and regulations regarding the maintenance of a drug-free workplace.

E. Service Provider represents that its program complies in all respects with any licensing or registration requirements applicable to programs for school-age children.

F. Service Provider will require documentation of security screening conducted by the New York City Department of Education or New York City Department of Health from all employees, interns or volunteers who have contact with children in the Library program or, if such documentation is not available, conduct, at its own expense, comparable background checks on such individuals before allowing their participation in the program. Upon request Service Provider shall provide the Library with documentation pertaining to such security clearance or background checks.

G. Service Provider acknowledges that it accepts responsibility for children who are participating in its program. Service Provider will arrange for appropriate supervision of children until picked up by a Parent or authorized caregiver and will not release children to third parties without prior approval of Parent or caregiver. If a Parent or authorized caregiver does not arrive within ten minutes after the end of the Program,

the Provider will notify the Library Manager and will follow the Library's Unattended Children Policy.

H. Service Provider will be responsible for obtaining and maintaining contact and emergency information from Parents as well as authorization from Parents for emergency care.

I. Service Provider will protect confidential information concerning children and Parents participating in the program. Prior written consent of Parents must be obtained before information concerning names, addresses or contact information is released to third parties, for any reason, and before children are photographed, recorded, or videoed. Further, no form for consent to release information; to photograph, record or video children; or to use such photographs, recordings or videos for any purpose may be provided to Parents of children participating in the program without prior review and prior written approval by the General Counsel for the Library.

J. Service Provider shall comply with NYPL's rules and regulations at all times.

K. Services provided in accordance with this Agreement shall be provided at no cost to children who participate in the program or their parents or other caretakers.

7. MISCELLANEOUS

A. Except as permitted above, Service Provider agrees that it shall not use NYPL's name or the name of any of its constituent parts or branches or any of NYPL's marks or logos for any promotional or similar purposes without the prior written approval of NYPL.

B. This agreement shall be binding on and shall inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assignees. This agreement may not be assigned by either Party without the prior written consent of the other. This agreement may be amended or supplemented only by the mutual written consent of the Parties' authorized representatives.

C. This agreement may be terminated by NYPL at any time including if this project is being funded by an outside entity or agency which, due to circumstances beyond the control of NYPL, cuts the funding in question.

D. This agreement and any schedules and exhibits thereto contain the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersede and replace any and all prior discussions, representations and understandings, whether oral or written.

E. This agreement shall in all respects be interpreted, construed, and governed in accordance with the laws of New York, regardless of the place of execution, negotiation or performance (without giving effect to any conflict of law principles under

New York law). The Parties agree that any and all claims arising under this agreement or relating thereto shall be heard and determined either in the United States District Court for the Southern District of New York or in the courts of the State of New York located in the City and County of New York, and the Parties hereby agree to submit themselves to the personal jurisdiction of those courts.

F. Service Provider hereby agrees to indemnify and hold harmless NYPL, its Trustees, officers, directors, agents, volunteers, interns and employees against any and all damages, claims, expenses or other liability, including attorneys' fees, arising out of or relating to Service Provider's breach of its representations and warranties hereunder or of any other provision of this agreement or through any act or omission of Service Provider (including its employees and its agents) in connection with Service Provider's performance of its obligations under this agreement. Service Provider shall select counsel appropriate for the defense of any such claim and acceptable to NYPL and shall pay all costs in connection therewith. NYPL shall have the right to participate in the defense or settlement of any such claim with counsel of its choice at its own expense.

G. The failure of a Party to insist upon strict adherence to any term of this agreement on any occasion shall not be considered a waiver of such Party's rights or deprive such Party of the right thereafter to insist upon strict adherence to that term or any other term of this agreement.

H. In the event that any one or more of the provisions of this agreement shall be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this agreement shall not be affected thereby.

I. Notices and all other communications which may or must be given under this agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or mailed by United States registered mail, return receipt requested, postage prepaid, or delivered by recognized overnight courier, charges prepaid to the address set forth on the first page hereof or to such other address as shall be designated by like notice. All notices to NYPL shall be sent to the attention of: Joel Schlissel, 445 Fifth Avenue, New York, NY, 10016. A copy of each such notice shall also be sent to the attention of: The Office of General Counsel, The New York Public Library, 445 Fifth Avenue, New York, NY 10016. All notices to Service Provider shall be sent to: and The Artist Archive, 46-12 Vernon Boulevard, Long Island City, NY 11101.

J. The representations, warranties and covenants herein contained as well as the provisions of Section 6 shall survive termination of this agreement.

K. Nothing in this agreement shall be construed as making either Party the partner, joint venturer or agent of the other Party, and neither Party shall have the power to obligate or bind the other Party in any manner whatsoever.

L. Section headings used in this agreement are for convenience only and shall not be used in the construction or interpretation of this agreement.

M. This agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

N. If fees to be paid by NYPL Service Provider shall not commence work on the project described in this agreement or the services described herein until NYPL's Purchasing Department has issued a Purchase Order ("Purchase Order") for this agreement and sent that Purchase Order to Service Provider. The only Contract that shall govern the project described in this agreement or the services described herein shall be the Contract(s) generated by NYPL. Any other Contract, whether or not signed by an employee of NYPL, shall be null and void. Notwithstanding anything to the contrary contained in any Contract, the project described in this agreement and/or the services described herein shall be governed by the terms of this agreement. Any invoices sent to NYPL must contain the NYPL Purchase Order Number.

O. Service Provider agrees to keep all non-public information that it obtains from NYPL in connection with this agreement confidential. In the event that Service Provider, its employees or agents have access to confidential Library or student/child information, Service Provider will notify the Library and take steps to assure that such information is not released to unauthorized third parties. Confidential information will include, but not be limited to: Library business or personnel records as well as any and all information concerning children, such as names, photographs, addresses, birth dates, and social security numbers. Breach of this provision will be deemed a breach of this agreement. Authorization by Parents to release information is subject to review and approval by General Counsel for the Library as described in Section 6, I, supra.

Q. Service Provider will reimburse the Library for costs incurred in replacing or repairing materials or equipment lost or damaged as the result of its activities which are the subject of this agreement. Service Provider will be responsible for removing material waste from the space provided for its program and returning any materials and furniture to their customary places.

SCHEDULE A

SCOPE OF SERVICES

Service Provider will provide one (1) educational art program for children on September 26, 2015 at the St. Agnes Library, 444 Amsterdam Avenue, New York, NY 10024 at 2:00 PM. Service Provider will lead a discussion with the audience, guided by the following educational objectives:

- To encourage dialogue among teachers, parents, guardians, and younger people about how art contributes to issues of community pride, quality of life, and life-long education.
- To familiarize participants with abstract art and provide them with tools to discuss and interpret it.
- To explore insights about the artistic process, such as overcoming challenges, fostering creativity, and instilling a disciplined work ethic.

Program will be ninety (90) minutes in length. One (1) NYPL staff member must be present for the duration of the program.

Service Provider will provide one (1) instructor and a documentary film on DVD.

NYPL will provide for program space, one (1) projector, one (1) DVD player and a sound system.

SCHEDULE A-1

Service Provider understands that there will be no compensation for performance of the Services paid by NYPL.

IN WITNESS WHEREOF, the parties have executed this agreement through their duly authorized representatives.

THE NEW YORK PUBLIC LIBRARY, ASTOR, LENOX AND TILDEN FOUNDATIONS

By:

Name

Title

Signature

Date

THE ARTIST ARCHIVES

By:

Name

Title

Signature

Date