

DATE, 20\_\_

NAME OF ADDRESSEE 1  
ADDRESS 1

NAME OF ADDRESSEE 2  
ADDRESS 2

NAME OF ADDRESSEE 3  
ADDRESS 3 [IF MORE THAN 3 COLLABORATING INSTITUTIONS, STATE ABOVE ONLY ADDRESS FOR THE LEAD COLLABORATING INSTITUTION AND THE FOLLOWING NOTE, AND ALSO ADD THE REFERENCED ADDENDUM TO THE END OF THE LETTER WITH THE ADDITION ADDRESSES: Additional addressees for this letter and their respective addresses are listed on Addendum A]

Dear ADDRESSEE 1 and ADDRESSEE 2:

The Council on Library and Information Resources (“CLIR”) acknowledges receipt of the proposal that you submitted to CLIR on DATE (the “Proposal”). The Proposal requests an appropriation of \$AMOUNT to the FULL NAME OF INSTITUTION 1 (“SHORTENED NAME OF INSTITUTION 1”), in collaboration with FULL NAME OF INSTITUTION 2, FULL NAME OF INSTITUTION 3 and FULL NAME OF INSTITUTION X (collectively with SHORTENED NAME OF INSTITUTION 1, the “Collaborating Institutions,” and each a “Collaborating Institution”), to support digitization of DESCRIPTION OF MATERIALS, as further described in the Proposal (the “Project”). If the Proposal is approved by CLIR, the funds would be used by the Collaborating Institutions solely to support the Project.

This agreement (the “Agreement”) between CLIR on the one hand and the Collaborating Institutions on the other (the “Parties”) sets forth the terms that will govern the intellectual property to be created or developed in connection with or otherwise incorporated into the Project in the event CLIR approves the Proposal. While CLIR will not obtain ownership rights in such intellectual property, it requires the Collaborating Institutions to agree to these terms as a condition of funding, in furtherance of the goal of CLIR and The Andrew W. Mellon Foundation (the “Foundation”) that these funds be used for the greatest possible educational, scholarly, and/or charitable benefit. The Foundation has provided funds to CLIR to support grants for the digitization of library and archival materials.

For the purposes of this Agreement, “Content” is defined as any or all of the images, text, and/or other works of authorship created or developed in connection with or otherwise incorporated into the Project. “Digital Copies” is defined as any or all of the digital copies of any of the Content. “Grant Term” is defined as the period set forth in CLIR’s grant award letter and any subsequent written amendments to the grant period authorized by CLIR, provided that CLIR approves the Proposal.

In consideration of CLIR’s support of the Project in the event CLIR approves the Proposal, the Parties agree as follows:

### **Publicity**

1. The Collaborating Institutions shall publish, distribute, and/or otherwise make available the Digital Copies for noncommercial educational, scholarly, and/or charitable purposes as specified in the Proposal.

The Collaborating Institutions shall dedicate all metadata associated with the Digital Copies to the public domain according to the terms of a Creative Commons-0 (CC0) Public Domain Dedication.

### **Right, Title, and Interest**

2. Each of the Collaborating Institutions represents and warrants that all Digital Copies created or developed by or for the Collaborating Institutions will either be: (a) created by employees of a Collaborating Institution acting within the scope of their employment as a “work made for hire” under 17 U.S.C. § 101 and who have entered into a signed, written contract assigning all other present and future right, title, and interest in such work to such Collaborating Institution, or (b) created by contractors, consultants, advisors, students, or other collaborators with whom a Collaborating Institution has entered into a signed, written contract, assigning all present and future right, title, and interest in such work to such Collaborating Institution.

### **Infringement**

3. Each of the Collaborating Institutions represents and warrants that use of the Content and the Digital Copies (in conformance with any terms and conditions of use imposed by such Collaborating Institution) does not and will not infringe on or misappropriate the copyright, patent, trade secret, or other rights of any person or entity. Without limiting the foregoing, each of the Collaborating Institutions represents and warrants that it has obtained all necessary permissions and/or licenses such that use of the Content in connection with the Project does not and will not violate the publicity or privacy rights of any person.

### **License to Digital Copies**

4. Each of the Collaborating Institutions hereby grants CLIR and/or a CLIR-designated nonprofit entity, a worldwide, perpetual, irrevocable, nonexclusive, royalty-free license to exercise all of its intellectual property rights (including sublicense rights through multiple tiers of sublicensees) in each of the Digital Copies for the purposes set forth herein; provided however that CLIR shall exercise its rights pursuant to the foregoing license only in the circumstances specified in paragraph 5. In the event that CLIR exercises its license rights, the license permits CLIR and/or a CLIR-designated nonprofit entity to (a) digitally and electronically transmit, perform, display, aggregate, link, and distribute any and all of the Digital Copies to users for noncommercial educational, scholarly, and/or charitable purposes, subject to agreements between CLIR and/or a CLIR-designated nonprofit entity, and such users concerning the noncommercial educational, scholarly, and/or charitable uses thereof; (b) reproduce and modify any of the Digital Copies in association with any of the rights licensed pursuant to (a); (c) permit noncommercial educational, scholarly, and/or charitable users to use, reproduce, perform, transmit, distribute, or display all or part of any of the Digital Copies for teaching or scholarly purposes; and (d) exercise any of the Collaborating Institutions' intellectual property rights necessary to give effect to any of the rights licensed pursuant to any of (a)–(c) in all media now known or in the future developed. For purposes of clarification, the license granted to CLIR in this paragraph 4 does not include a license to the Content.

#### **Conditions of License to Digital Copies**

5. CLIR may exercise the license to any of the Digital Copies as specified in paragraph 4 only in the event that the Collaborating Institutions fail to publish, distribute, and/or make available such Digital Copies to users for noncommercial educational, scholarly, and/or charitable purposes by the end date of the Grant Term or at any time thereafter for any reason, including as a result of termination of the grant to the Collaborating Institutions. If CLIR elects to exercise its license to any of the Digital Copies, each of the Collaborating Institutions shall (a) inform CLIR of any third party permissions and/or licenses that are necessary in order for CLIR to exercise any of the rights licensed pursuant to paragraph 4 with respect to such Digital Copies, and (b) cooperate with CLIR, both during and after the Grant Term, to facilitate the transfer to CLIR and/or a CLIR-designated nonprofit entity of such Digital Copies as CLIR may reasonably request in order for CLIR to enjoy the license granted to it.

#### **Fees**

6. With respect to Content and Digital Copies, to the extent that a Collaborating Institution, or any vendor appointed by a Collaborating Institution, charges any license or service fees to the nonprofit educational, scholarly, and/or charitable communities in conjunction with such Content and Digital Copies, such Collaborating Institution agrees to obtain CLIR's approval for such pricing in advance of the initial for-fee distribution or servicing (whether during or after the Grant Term) and in advance of any subsequent changes in pricing that occur during

the Grant Term. Without in any way limiting the foregoing, each of the Collaborating Institutions agrees that neither the intent nor the reasonable effect of charging fees for services would be inconsistent with the Collaborating Institutions' commitment to publish, distribute, or otherwise make available the Content and Digital Copies in the manner described in the Proposal.

### **Transfer and Assignment**

7. CLIR reserves the right to approve, or withhold approval, in advance of any proposed transfer or assignment of the Project (or any part thereof) or any of the Digital Copies, which approval will not be unreasonably withheld. Each of the Collaborating Institutions represents and warrants that any permitted assignment or other transfer of the Project (or any part thereof) or any of the Digital Copies, shall be subject to its representations, warranties, and obligations under this Agreement, and any purported assignment or transfer to the contrary shall be null and void.

### **CLIR and Foundation Involvement**

8. Each of the Collaborating Institutions acknowledges and agrees that, to the best of its knowledge, neither CLIR nor the Foundation will derive any direct or indirect financial benefit from the Project, the Content, or the Digital Copies, and that CLIR and the Foundation have no right or ability to supervise or control the implementation and uses of the Project, the Content, or the Digital Copies (other than the right to approve pricing, transfer, and assignment as set forth in paragraphs 6 and 7). In no event shall CLIR, the Foundation, or their respective officers, trustees, employees, or agents be responsible for any representation or warranty made by any Collaborating Institution regarding the Project, the Content, or the Digital Copies, nor shall CLIR or the Foundation be liable for any direct, indirect, special, consequential, punitive, incidental, or other damages related to the Project or use of the Content or any of the Digital Copies by any person or entity, either during the Grant Term or thereafter. The Collaborating Institutions shall be responsible for all damages arising out of the acts or omissions of the Collaborating Institutions or any of their respective employees, contractors, consultants, advisors, students, or other collaborators. No Collaborating Institution shall make any statement, representation, or warranty, or accept any liability or responsibility whatsoever, with regard to any person or entity, that are inconsistent with any disclaimer or limitation specified in this paragraph 8.

### **Third Party Beneficiary**

9. The Parties acknowledge that the Foundation is a third party beneficiary of this Agreement and has the right to enforce the terms of this Agreement.

### **Choice of Law and Jurisdiction**

10. This Agreement shall be governed by the copyright laws of the United States and laws of the Commonwealth of Virginia, without giving effect to its conflict of law principles.

The Parties agree to bring any suit with respect to this Agreement in the Commonwealth of Virginia, and the Parties consent to such jurisdiction.

**Execution**

11. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

**Headings**

12. The headings in this Agreement are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

**Merger**

13. This Agreement, together with the Proposal, constitute the entire agreement and supersede all prior communications, understandings, and agreements between the Parties, whether written or oral, relating to the subject matter herein.

We ask that each Collaborating Institution indicate its consent to these terms by having an officer of each institution with corporate authority sign below, thus binding the Collaborating Institutions, and by returning one original signed copy of this letter to me as soon as possible. This Agreement will only be effective once it has been executed by all of the Collaborating Institutions.

Sincerely,

<<CLIR OFFICER>>

<<TITLE>>

[INDIVIDUAL SIGNATURE PAGES FOR COLLABORATING INSTITUTIONS  
FOLLOW]

Signature Page for FULL NAME OF INSTITUTION 1

FULL NAME OF INSTITUTION 1

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature Page for FULL NAME OF INSTITUTION 2

FULL NAME OF INSTITUTION 2

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature Page for FULL NAME OF INSTITUTION 3

FULL NAME OF INSTITUTION 3

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_