



MadeMill is the Makerspace and Advanced Digital Media Lab  
at Bayview Yards in Ottawa  
Operated by prototypeD TEAM Inc.

THIS ARTIST RESIDENCY AGREEMENT (this “Residency Agreement”) is made as of the \_\_\_\_\_  
Day of \_\_\_\_\_, 2017.

BETWEEN:

prototypeD TEAM Inc. o/a MadeMill  
 (“prototypeD”)

AND

\_\_\_\_\_  
\_\_\_\_\_  
(the “Artist”)

**WHEREAS** prototypeD issued a call for submissions from artists to participate in the prototypeD artist residency;

**AND WHEREAS** the Artist responded by providing a Proposal (as defined) that was assessed and accepted by prototypeD;

**AND WHEREAS** prototypeD offered the Artist a three (3) week residency at the Site (as defined below), subject to the parties hereto entering into this Residency Agreement;

**AND WHEREAS** the Artist accepted prototypeD’s offer of a three (3) week residency to be completed at the Site;

**AND WHEREAS** this Residency Agreement sets forth the terms and conditions under which the parties hereto will execute and carry out their respective obligations in connection with this Residency Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the parties agree as follows:

**1. Definitions**

"**Commission Fee**" means the sum of payable to the Artist in accordance with the terms of this Residency Agreement. Harmonized Sales Tax shall be in addition to the Commission Fee in the event that the Artist is an HST registrant.

"**Design Process**" means the creation, execution, delivery and performance by the Artist of the Work pursuant to the terms of this Residency Agreement.

"**Party**" means either the Artist or prototypeD as the case may be and "**Parties**" means the Artist and prototypeD.

"**Proposal**" means the Artist's submission in response to prototypeD's submission to participate which was assessed and accepted by prototypeD and is further specified and described at Schedule "A" hereto;

"**Start Date**" means a date and time specified by prototypeD;

"**Site**" means the location at which the Work will be installed, displayed, painted and/or affixed as determined by prototypeD -;

"**Work**" means the work to be authored, performed and delivered by the Artist during the term of this Residency Agreement and as further specified and described at Schedule "B" hereto.

## **2. Acknowledgments between the Parties**

2.1 The Parties acknowledge and agree that the Work shall be performed at the Site and that prototypeD intends to create a photo, video and audio record of the Design Process and the Work.

2.2 The Artist acknowledges and agrees that:

(a) the selection of the Artist for the residency was made by prototypeD in reliance on the Artist's submission of the Proposal;

(b) Artist shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the Design Process and delivery of the Work; and

(c) prototypeD intends to create a photo, video and audio record of the Proposal, Design Process and the Work and to use such records for marketing materials in the furtherance of prototypeD's activities and the Artist agrees that prototypeD may display, show or exhibit the Work, as the case may be depending on the Work's medium, for a period of up to six (6) months from the End Date.

## **3. Delivery of the Design Process and Work**

3.1 prototypeD hereby commissions the Artist to undertake the Design Process and perform or author/create the Work pursuant to the terms of this Residency Agreement.

3.2 The Artist hereby acknowledges and agrees that:

(a) the Design Process and the Work shall be undertaken at the Site over the term of this Residency Agreement in three (3) distinct phases;

(b) prototypeD intends to record and create media in respect of the Proposal, the Design Process and the Work and Artist agrees to cooperate with prototypeD by adhering to the following schedule and framework in relation to the Design Process and the Work:

(i) from the Start Date through the end of the 1<sup>st</sup> week after the Start Date, the Artist shall attend at the Site daily in order to carry out sketches, drawings and modelling to be made available online as open source content; and

(ii) during the second week and third week of the term of this Residency Agreement, the Artist shall produce and deliver a singular project based on the Artist's design that was submitted in respect of the Work.

(c) during the term of this Residency Agreement, the Artist shall participate in three (3) workshops (one (1) workshop per week) organized by members of prototypeD related to the design of the Work, the Design Process and the Work.

#### **4. Obligations of the Parties**

##### 4.1 prototypeD agrees to:

(a) arrange for the reasonable preparation and general readiness of the Site so that the Artist may undertake the design, complete the Design Process and the Work; and

(b) reimburse the Artist during the term of this Residency Agreement a sum not to exceed four hundred and fifty dollars (\$450) for the cost of materials that have been duly purchased during the term of this Residency Agreement (as reasonably established by the production of invoices and/or receipts) and which are required by the Artist in connection with the Design Process and/or the Work, provided that a request for reimbursement has been approved in advance for by prototypeD and receipt(s) are provided as proof of payment.

##### 4.2 The Artist agrees to:

(a) Provide a valid police records check "Level 3, working with vulnerable people";

(b) follow all instructions of Site managers in relation to access and attendance on the Site and the use of any property of prototypeD;

(c) follow reasonable instructions of prototypeD in relation to production, safety and security policies, directions and guidelines; and

(d) provide prototypeD with its Harmonized Sales Tax Number (#\_\_\_\_\_), to the extent the Artist is an HST registrant.

(e) provide prototypeD with its business number (#\_\_\_\_\_), to the extent the Artist is or represents a registered business.

## **5. Fees and Expenses**

5.1 prototypeD agrees to pay the Artist a Commission Fee in the amount of **TWO THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$2,250)** as consideration for the performance of the design, Design Process and the Work as follows:

(a) prototypeD agrees to pay the Artist **SEVEN HUNDRED AND FIFTY DOLLARS (\$750)** on presentation of the Artist's invoice, which such payment shall be made to the Artist on the first regular pay date following the end of the first week of this Residency Agreement;

(b) prototypeD agrees to pay the Artist a Commission Fee in the amount of **SEVEN HUNDRED AND FIFTY DOLLARS (\$750)** on presentation of the Artist's invoice, which such payment shall be made to the Artist on the first regular pay date following the end of the second week of this Residency Agreement; and

(c) prototypeD agrees to pay the Artist a Commission Fee in the amount of **SEVEN HUNDRED AND FIFTY DOLLARS (\$750)** on presentation of the Artist's invoice, which such payment shall be made to the Artist on the first regular pay date following the end of the third week of this Residency Agreement.

5.2 All dollar figures shown are in Canadian Dollars, and all payments shall be made in Canadian Dollars. Payments of Commission Fee when payable and reimbursement for expenses as the case may be will be processed and paid on the first regular pay date after the Artist has presented an invoice.

5.3 All invoices are to be made out to prototypeD TEAM Inc. include the Artist's name, the week of the residency, and a description of the work undertaken.

## **6. Premises and Supervision**

6.1 The Artist agrees to observe all security requirements and measures in effect at the Site and the instructions of prototypeD and/or managers of the Site in respect of access, security and safety for the Site.

## **7. No Warranty**

7.1 The use of equipment, machinery or systems is made by prototypeD without warranty of any kind to the Artist. prototypeD makes no warranty that the Work will be fit for public sale or use. The Artist assumes all required obligations to certify and test the Work and independently assess its viability for all proposed uses to be made of the Work by the Artist.

7.2 There are no warranties, representations or conditions, expressed or implied, written or oral, arising by statute, operation or law or otherwise, regarding any other product or service provided hereunder or in connection herewith. prototypeD, its licensors and suppliers, disclaim any implied warranty or condition of merchantable quality, merchantability, durability or fitness for a particular purpose, title or non-infringement. No representation or other affirmation of fact, including but not limited to statements regarding performance of the products or the services that is not contained in this section, will be deemed to be a warranty. Without limiting the foregoing, prototypeD makes no representations or warranties whatsoever with regard to any products or services and assumes no responsibility or liability with respect thereto.

## **8. License to Publish Work**

8.1 The Artist hereby grants to prototypeD a royalty free, perpetual and non-exclusive license to use the intellectual property authored, developed or discovered during the Work's Design Process including, but not limited to, design and manufacturing methods, artwork, processes, software, or other licensable materials not authored, owned or developed by the Artist prior to the Start Date, and Artist specifically consents to prototypeD utilizing such intellectual property. prototypeD will ensure that the terms of non-commercial public use are prominently published on any prototypeD website where the Work and Design Process are so published. Third party intellectual property, including currently available public information or licensed creative commons ("open source works") may be used in the authorship/creation of the Work if such use and its subsequent publication by prototypeD is permitted by the applicable open source works' license. Where such open source works are used, they will be identified by the Artist as may be required by the terms of any applicable open source works' license. Notwithstanding the foregoing but subject to the License granted herein this Section 8, the Artist shall retain ownership of and all moral rights associated with the Work.

The Artist hereby consents to and authorizes prototypeD to photograph and/or digitally record the Artist's image and likeness during the Artist's work under the Residency Agreement, and authorizes prototypeD to use such photographs and/or digital images for broadcast, display, exhibition, advertising or promotion in any media of prototype D and its artists' residency program.

## **9. Indemnification**

9.1 The Artist shall indemnify and save harmless prototypeD and any related parties, employees, agents, volunteers, officers or directors, from any claims, demands, losses, costs, charges, actions and other proceedings, made or brought against, suffered by or imposed upon the Artist or its property in respect of any loss, damage or injury, including injury resulting in death, to any person or property directly or indirectly arising out of, resulting from or sustained by reason of negligence or otherwise of prototypeD, its employees, agents, volunteers, officers or directors. The indemnities contained herein shall survive the termination of this Residency Agreement.

## **10. Patent, Trademark, Trade Secret and Copyright Infringement**

10.1 Artist covenants that the Process, Design Process and the Work shall not infringe any existing patent, trademark, trade secret or copyright registered or recognized in Canada or elsewhere with respect to or in connection with the intended use of the Process, Design Process, the Work or materials or both by the Artist at the time the Process, Design Process and/or the Work is delivered by the Artist. Prior to commencement of the Process, Design Process, the Artist will provide prototypeD will all required assurances relating to the representation and warranty contained herein.

10.2 Artist agrees to indemnify prototypeD from and against any loss, damage or liability for the infringement of any such patent, trademark, trade secret or copyright by prototypeD arising from or in connection with the Process, Design Process and/or the Work.

10.3 Artist also agrees that it shall defend, settle or compromise, at its own expense, any action for patent, trademark, trade secret or copyright infringement as against prototypeD in relation to the foregoing.

10.4 Artist acknowledges and agrees that it is solely responsible for taking any action that may be required to protect the Artist's intellectual property rights in respect of the Design Process, the Proposal or the Work, as the case may be.

## **11. Confidentiality**

11.1 Artist shall not disclose the existence or terms of this Residency Agreement except in accordance with the terms of this Residency Agreement. The Artist may disclose the terms and existence of this Residency Agreement to its consultants and professional advisors and as required by law, provided that if a request for disclosure is made by a competent legal authority the Artist agrees to notify prototypeD of such request to extent such notice is permissible.

## **12. Nonsolicitation**

12.1 The Artist agrees that during the term of this Residency Agreement and for a period of three (3) year(s) after the termination of it, it shall not, solicit for employment any prototypeD employees who were or are assigned to perform work hereunder or any subcontractors utilized by prototypeD and identified to the Artist in writing.

## **13. Ownership of Materials**

13.1 Subject to Section 8.1 and the license granted therein to prototypeD, all original materials, data, specifications, tapes and programs, either in written or in magnetic or electronic form, which are provided by the Artist to prototypeD shall be or remain the sole property of the Artist.

13.2 All materials, data, specifications, tapes and programs utilized or developed by prototypeD pursuant to or under this Residency Agreement shall remain the sole property of prototypeD.

## **14. Risk of Loss and insurance**

14.1 All work, including but not limited to the materials, data, specifications, tapes and programs which have been delivered to the Artist by prototypeD hereunder shall become the property and responsibility of the Artist to protect from loss, damage or destruction. The replacement of any such work lost, damaged or destroyed after delivery to the Artist shall be at the sole expense of the Artist.

14.2 Artist acknowledges and agrees that it is solely responsible for obtaining and maintaining appropriate commercial liability insurance and/or critical illness and disability insurance with such coverage amounts that the Artist deems appropriate in these circumstances.

## **15. Assignment**

15.1 Neither this Residency Agreement nor any interest in it may be assigned or ceded in any manner by either Party to it without the prior written consent of the nonassigning Party, which consent shall not be unreasonably withheld. Notwithstanding anything else contained herein, prototypeD shall be entitled to hire and contract with subtrades and subcontractors

and other independent parties (at its own cost) to fulfil the mandate as outlined in this Residency Agreement, provided such party agrees to be bound by the applicable provisions of this Residency Agreement.

## **16. Liability**

16.1 Circumstances may arise where, because of a default on the part of prototypeD or other liability, Artist may be entitled to recover damages from prototypeD. In each such instance, regardless of the basis on which Artist is entitled to claim damages (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), prototypeD is liable for no more than the maximum aggregate amount equivalent to the commission paid to the Artist hereunder. This limit is the maximum for which prototypeD is responsible. Under no circumstances is prototypeD liable for third-party claims against Artist for damages; loss of prospective profits or savings or on account of expenditures, investments, leases or commitments whatsoever in connection with Artist's business or goodwill, loss of, or damage to Artist records or data; or special exemplary punitive, incidental, consequential or indirect damages, even if informed of their possibility or they are foreseeable.

## **17. Duration of Residency Agreement**

17.1 Unless otherwise terminated as provided for in Section 19 hereof, this Residency Agreement shall commence on \_\_\_\_\_ (the "Start Date") and end on \_\_\_\_\_ (the "End Date").

## **18. Termination**

18.1 This Residency Agreement may be terminated by:

- (a) either Party upon written notice to the other Party.
- (b) either Party in the event of the default by the other Party in the performance of any other material term or condition of this Residency Agreement and such default continues uncured for a period of two (2) days after the delivery of written notice thereof by the terminating Party to the other Party; or
- (c) the Artist in the event of a default by prototypeD of its payment obligations hereunder to and such default continues for a period of two (2) days after the delivery of written notice thereof to prototypeD; or
- (d) prototypeD immediately in the event of cancellation of funding from Innovation Centre at Bayview Yards(or any successor entity).

18.2 In the event of termination, once outstanding accounts, if any, are settled and there is no balance owing by Artist to prototypeD, all physical materials and copies of project



documents and digital materials will be returned by prototypeD to the Artist at the Artist's cost.

## **19. Notices**

20.1 Wherever in this Residency Agreement it shall be required or permitted that notice be given or served by either Party to or on the other, the notice shall be in writing and shall be delivered personally to the Party to whom it is given or sent by prepaid, registered mail, or by PDF or fax, addressed as follows:

### **prototypeD:**

info@thebayviewyards.com

phone: 613-216-4229

Mailing: The Bayview Yards, 7 Bayview Rd, Ottawa, ON K1Y 2C5

### **Artist:**

## **20. Miscellaneous**

20.1 This Residency Agreement (and all Schedules attached hereto) constitutes all of the Residency Agreements between prototypeD and the Artist pertaining to the subject matter of it and supersedes all prior Residency Agreements, undertakings, negotiations and discussions, whether oral or written, of the Parties to it and there are no warranties, representations or other Residency Agreements (save and except for any non-disclosure Residency Agreement existing between the Parties) between the Parties to it in connection with the subjectmatter of it except as specifically set forth or referred to in this Residency Agreement. No amendment, supplement, modification, waiver or termination of this Residency Agreement shall be binding unless executed in writing by the Party hereto to be bound thereby. No waiver of any other provisions of this Residency Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar) nor shall the waiver constitute a continuing waiver unless otherwise expressly provided. Sections 8, 9, 10, 11, 12, 13, 14, 15 and 16 shall survive the termination and/or expiration of this Residency Agreement).

20.2 Headings are not to be considered part of this Residency Agreement, are included solely for convenience and are not intended to be full or accurate descriptions of the content of the Sections.

20.3 In this Residency Agreement, words importing the singular number include the plural and vice versa, words importing the masculine gender include the feminine and neuter genders; and words importing persons include individuals, sole proprietors, corporations, partnerships, trusts and unincorporated associations.

20.4 This Residency Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada in force therein.

20.5 The invalidity or unenforceability of any provision of this Residency Agreement or any covenant in it shall not affect the validity or enforceability of any other provision or covenant in it and the invalid provision or covenant shall be deemed to be severable.

20.6 Nothing herein shall be deemed to create a joint venture, partnership or employee-employer relationship between the Artist and prototypeD.

AND WHEREIN, the Parties have executed this Residency Agreement on the day and year first above written.

prototypeD TEAM INC. o/a MadeMill

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Janak Alford, *President*

I have authority to bind the Corporation

**[ARTIST]**

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Name:

**SCHEDULE "A"**  
**ARTIST'S PROPOSAL**

**SCHEDULE "B"**

**WORK**

**TO BE PERFORMED/COMPLETED BY THE ARTIST**