

## MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding (this "MOU"), dated as of September 14, 2007, between the Government of Peru ("Peru") and Yale University ("Yale").

**Whereas**, Peru and Yale have undertaken discussions to create a new long-term collaborative relationship centered around research, education, and the artifacts and related materials excavated by Hiram Bingham in Machu Picchu (the "Materials"); and

**Whereas**, Yale and Peru acknowledge that the Materials are treasured by humanity, and that the monuments of Machu Picchu were properly declared Cultural Patrimony of the World by UNESCO; and

**Whereas**, Peru has rightly and justly honored the achievements and memory of Hiram Bingham, whose discoveries and contributions to archaeology and geography are respected worldwide; and

**Whereas**, for more than ninety years Yale has acted as steward of the Materials, and has conserved, preserved, researched and made available to the public and international scholarly community for viewing and study this historically recognized cultural patrimony; and

**Whereas**, Peru and Yale wish to amicably resolve all questions concerning ownership and possession of the Materials; and

**Whereas**, in the spirit of cooperation, Yale and Peru wish to create a collaborative relationship that will assure the future conservation, study and exhibition of the Materials;

**NOW THEREFORE**, it is the mutual intention of Yale and Peru to work expeditiously and in good faith toward the negotiation, execution, and implementation of an Agreement for Collaborative Stewardship of Inca Archaeological Materials from Machu Picchu (the "Agreement"), and, to that end, hereby agree in principle that the Agreement shall contain the following terms:

**Section 1. Principles of Cooperation, Collaboration and Friendship.** The Agreement shall be entered into in a spirit of friendly collaboration between Peru and Yale. It is intended to create a model for the ongoing cooperative stewardship of materials that are of historical importance to Peru and Yale, and of cultural importance to the people of Peru and the world. Peru expresses its gratitude for the stewardship, conservation and intellectual contribution of Yale in connection with these Materials for over nine decades, and for the groundbreaking scholarship and exhibition of the Materials that has occurred under Yale's sponsorship. Yale expresses its gratitude to the Peruvian people, whose ancestors created the historical materials that scientists and curators at Yale have conserved, displayed and studied in those nine decades.



## Section 2. Definitions.

Museum Quality Pieces, as used in this MOU, means those pieces within the Materials that, at the time of this Agreement, are suitable for and capable of being displayed in a museum exhibition. The Museum Quality Pieces specifically contemplated by this Agreement are those documented in the *Inventory of Museum-Quality Objects from the Excavations at Machu Picchu by the 1912 Yale-Peruvian Scientific Expedition* delivered to representatives of Peru on September 14, 2007.

Non-Museum Quality Pieces, as used in this MOU, means those pieces within the Materials that, at the time of this Agreement, are not suitable for and capable of being displayed in a museum exhibition.

Usufructuary Rights, as used in this MOU, means the rights to possess, use and enjoy for academic, scientific, curatorial or museological purposes, including but not limited to these explicit rights: the rights to study, restore, assemble, date through chemical or physical means, exhibit, lend for traveling exhibits, publish research related to, and publish depictions or make reproductions or copies in any media or format; no monetary payment shall be required for such rights.

**Section 3. Future Collaborations in Archaeology and Natural History.** Peru and Yale intend to create a collaborative relationship for the future study, education, joint research, and exhibition centered around the Materials and similar artifacts. This collaborative relationship shall include a Traveling Exhibit of the Materials, the construction of a Museum and Research Center in Cuzco, and extend to other collaborative activities.

**(a). Traveling Exhibit Provisions.** Within one year of the date of the execution of the Agreement, Yale agrees to re-constitute at its expense the exhibition of Materials that was created under the auspices of Yale's Peabody Museum, to serve as a Traveling Exhibit that shall spend two years visiting various venues in the United States, Canada and other countries jointly selected by Peru and Yale. The final venue of the Traveling Exhibit shall be Cuzco, Peru, unless construction of the Machu Picchu Museum and Research Center is not then complete, in which event the temporary venue shall be the Peabody Museum in Connecticut, U.S.A., where the Materials will be housed until construction is completed. The Traveling Exhibit shall include the Museum Quality Pieces (excluding pieces that are duplicative or inconsistent with the narrative structure of the exhibit), other artifacts lent by Yale, and at least 40 other objects of similar quality and interest to be loaned (at its expense) by Peru. The parties intend that the Traveling Exhibit shall serve as a vehicle to promote understanding of Inca life and culture, and tourism to Inca sites in Peru. Peru and Yale shall collaborate in promoting and publicizing the Traveling Exhibit. The Traveling Exhibit shall also promote the sale of suitable merchandise created by Peruvian artisans and industry. Peru and Yale have designated Richard Burger to serve as the curator of the Traveling Exhibit. Net revenue realized from special admission charges and from merchandising of Peruvian materials as part of the Traveling Exhibit shall be used to underwrite the planning and construction of

the Machu Picchu Museum and Research Center. Peru shall designate a representative responsible for promotion of the Traveling Exhibit and its merchandise program, and to facilitate the loan process.


**(b) The Machu Picchu Museum and Research Center.** Peru agrees to plan and construct at its expense a museum in or around Cuzco (the "Machu Picchu Museum and Research Center") to house the Museum Quality pieces, which shall meet standards of security, and other technical specifications agreed upon by the parties. Once the Museum is completed as specified and reviewed as ready for operation, but not sooner than the Traveling Exhibition shall have made its agreed-upon international tour, the Museum Quality pieces shall be transferred to that facility. An Advisory Board of five experts in archaeology or related fields shall be involved in the planning and operation of the Machu Picchu Museum and Research Center. The Advisory Board shall consist of two members appointed by Peru and two members appointed by Yale, and a fifth person selected by majority vote of the appointed members, who shall serve as Chair. The Machu Picchu Museum and Research Center shall include a suitable memorial acknowledging the life and work of Hiram Bingham.

**(c) Future and Continuing Collaboration.** The Agreement shall include such other plans for collaborative activities as the parties may agree to.

**(d) Disposition of the Materials.**

(i) The Agreement shall provide that Yale will acknowledge Peru's title in the Materials; and

(ii) The Agreement shall convey to Yale Usufructuary Rights in the Materials, which rights shall extend for a term as provided in subparagraph (iv) below, except as subparagraph (iii) may otherwise provide.

 (iii) Upon Peru's fulfillment of its obligations relating to the Traveling Exhibit and completion of the Machu Picchu Museum and Research Center and its readiness for operation, Yale's Usufructuary Rights in the Museum Quality Pieces, except for certain pieces which as agreed by both parties shall be exhibited by the Yale Peabody Museum, and in a portion of the Non-Museum Quality Pieces which shall be pieces as to which Yale has no research plans in contemplation and which shall be designated in the Agreement, shall terminate. The pieces as to which Yale's Usufructuary Rights so terminate will be returned to Peru at that time.

(iv) The term of the Usufructuary Rights referred to in subparagraph (ii) shall be 99 years.

(v) Subparagraph (i) shall be dependent and conditioned upon simultaneous occurrence of subparagraph (ii) above.

(vi) Yale shall be assured access for research purposes to pieces returned to Peru under the Agreement, and Peruvian scholars shall have access for research purposes to the Materials housed at the Peabody Museum of Natural History.

**Section 4. Choice of Forum and Jurisdiction.**

(a) The Agreement shall provide that any dispute arising out of or related to this Agreement, or involving matters that are the subject of this agreement, shall be adjudicated in the United States District Court for the District of Connecticut. Both Parties expressly acknowledge that the United States District Court for the District of Connecticut has personal jurisdiction over them and jurisdiction in rem over the property that is the subject of this Agreement. Both Parties further expressly acknowledge that the property that is the subject of this dispute has value far beyond \$200,000, and that their citizenship is diverse. If and only if, notwithstanding the foregoing, the United States District Court for the District of Connecticut were to lack subject matter jurisdiction, then any dispute arising out of or related to this Agreement shall be adjudicated by the Superior Court of the State of Connecticut, Judicial District of New Haven; or, if and only if neither of the two aforementioned courts shall have jurisdiction to hear such a dispute, in whatever court has jurisdiction.

(b) The Agreement shall be governed by Connecticut law, without regard to its conflict of laws principles.

**Section 5. General Provisions**

(a) **Definitive Agreement.** The parties shall diligently work to produce a final agreement within 60 days; provided, however, that the provisions of this agreement shall not be binding upon the parties unless and until a final and definitive agreement satisfactory to the parties has been negotiated, fully executed and delivered.

(b) The parties agree that with the execution of the Agreement contemplated herein, the Government of Peru shall release Yale from any legal claims to the Materials resulting from prior circumstances.

(c) This MOU:

(i) Constitutes the entire agreement among the parties concerning the subject matter hereof, and supersedes all other and prior agreements, writings, or understandings, oral or written, with respect thereto;

(ii) May be amended only by a writing signed by both parties;

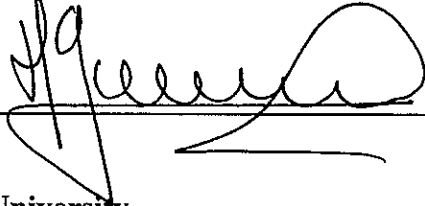
(iii) Has been reviewed and negotiated by both parties and their counsel, and shall be construed without regard to any presumption or other rule requiring construction against the party drafting the provision to be interpreted, and

(iv) May be executed in separate counterparts, each of which when so executed shall constitute an original, but all of which together shall constitute one and the same instrument.

(d) Each of the parties represents that it has the full power and authority to enter into, have executed, and deliver this MOU. Each person executing this MOU represents that he or she has full right, authority and capacity to act on behalf of the party for which the MOU is executed.

**Government of Peru**

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



**Yale University**

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

