



New York Live Arts
 219 W 19th Street
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 newyorklivearts.org
 Home of the Bill T. Jones /
 Arnie Zane Company

NEW YORK LIVE ARTS FISCAL SPONSORSHIP AGREEMENT

This Fiscal Sponsorship Agreement (this “Agreement”) is entered into on _____, 2022 (the “Effective Date”) by and between _____ (“Member”), and New York Live Arts (“Live Arts”), a New York non-profit corporation that is classified as a public charity under the Internal Revenue Code of 1986, as amended (the “Code”), with a place of business at 219 West 19th Street, New York, NY 10011 (each a “Party,” and collectively, the “Parties”).

Email: _____
 Telephone Number: _____
 Social Security or EIN #: _____

RECITALS

WHEREAS, Member intends to fulfill the charitable activities described in the associated Project Description (the “Project”);

WHEREAS, Live Arts has determined that supporting the Project would be in furtherance of the charitable purposes of Live Arts, and has approved the establishment of a restricted fund to receive donations in support of the Project and to make disbursements of such donations to Member in furtherance of the Project’s purpose, and

WHEREAS, Member desires to manage the Project under the fiscal sponsorship of Live Arts.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Term of Agreement. On the Effective Date, Live Arts shall assume sponsorship of the Project pursuant to the terms of this Agreement until the date on which Member’s Associate Artist membership with Live Arts expires (the “Term”); provided that Live Arts’ sponsorship may be renewed if Member complies with the provisions set forth in Section 9(a) herein.
2. Project Fund and Fees; Taxes.
 - (a) Project Fund and Fees.
 - (i) Beginning on the Effective Date, Live Arts shall place 94% of all gifts, grants, contributions and other revenues received by Live Arts (each a “Contribution,” and collectively, the “Contributions”) in support of the purposes of the Project (the “Purposes”) into a restricted fund (including all income earned on Contributions, the “Project Fund”) to be used for the sole benefit of the Purposes as they may be defined by Member from time to time with the prior written approval of Live Arts. Member agrees that 6% of all Contributions received by Live Arts in support of the Purposes shall be retained by Live Arts as fees for Live Arts’ administrative services as a fiscal sponsor.
 - (ii) Live Arts shall transfer any or all of the Project Funds to Member in accordance with the Budget (as defined below) and to the extent that Live Arts, in its sole discretion, reasonably determines that such

payment will advance the Purposes as well as the charitable purposes of Live Arts. In the event that Live Arts reasonably determines that transferring the Project Funds would not be in accordance with the Budget, would not advance the Purposes, or would not advance the charitable purposes of Live Arts, and Live Arts has provided advance written notice to Member of such determination, Live Arts shall not be required to transfer the disputed Project Funds to Member.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Live Arts retains the unilateral right to withhold, withdraw or demand the immediate return of any or all Project Funds from Member and to use such funds in order to accomplish the Purposes.

(b) **Taxes.** The parties agree that all Project Funds shall be reported as the assets of Live Arts for tax and financial accounting purposes until disbursed to Member pursuant to this Agreement.

3. **Budget.** Prior to the receipt of any Project Funds, Member shall submit an initial report to Live Arts that sets forth the budget of the Project (the "**Budget**") and describes how the items in the Budget will further the Purposes for the review and approval of Live Arts. Live Arts shall provide Member with written notice of its approval or disapproval of the Budget within thirty (30) calendar days of receipt of the proposed Budget. At any time that Member determines that a material change should be made to the Budget, Member shall submit a revised Budget to Live Arts for its approval.

4. **Use of Project Funds by Member.** Member shall use any grant of Project Funds that it receives from Live Arts solely for the Purposes and in accordance with the Budget, and Member shall, promptly at the request of Live Arts, repay to Live Arts any portion of the Project Funds that is not used for the Purposes. Any significant changes in the use of Project Funds from the use set forth in the Budget must be approved in writing by Live Arts before implementation. Member shall not use any portion of Project Funds in violation of the Code or any other federal, state, or local law.

5. **Solicitations.** Member shall have sole responsibility for soliciting Contributions to Live Arts that are in support of the Purposes. Member's choice of sources for Contributions ("**Sources**") and the content of Member's fund-raising materials for such Contributions shall be submitted to Live Arts in advance, and shall be subject to Live Arts' prior approval. All grant agreements, pledges, or other commitments with Sources to support the Project via the Project Fund shall be subject to Live Arts' approval and shall be executed by Live Arts.

6. **Agency.** This Agreement shall not be deemed to create any relationship of agency, partnership, or joint venture between the Parties hereto, and Member shall make no such representation to anyone. Live Arts shall not be responsible for any act or omission of Member.

7. **Reports.**

(a) Member shall submit full and complete reports that are required to be provided pursuant to any Contribution received by Live Arts on behalf of the Project (each report, a "**Report**") to Live Arts reasonably in advance of when Member or Live Arts is required to submit any such Report to the donor of any Contribution. Member shall notify Live Arts immediately of any change that may have a material impact upon the Project.

- (b) Member shall submit, at the end of the annual accounting period, which ends on June 30, 2022, a full and complete Fiscal Sponsorship Expenditure Report (the "FSE Report") to Live Arts. The form of the FSE Report that Member must use shall be provided by Live Arts.
- (c) Member will maintain complete and accurate records of all Project Funds received and expenses incurred, including receipts, as well as a complete file of all Project contracts and other documents. Member will provide copies of these materials to Live Arts promptly upon request.
8. Indemnification. Member hereby agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless Live Arts, its officers, directors, employees and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from or in connection with: (a) any act or omission of Member, its employees or agents, in applying for, accepting the grant of or expending Project Funds or in carrying out the Project, except to the extent that such claims, liabilities, losses or expenses arise solely from or in connection with any act or omission of Live Arts, its officers, directors, employees or agents; (b) material breach of this Agreement by Member; or (c) the negligence or willful misconduct of Member. Upon the execution of this Agreement, Member shall promptly obtain adequate directors and officers insurance and liability insurance.
9. Renewal and Termination.
- (a) Live Arts' fiscal sponsorship of the Project shall terminate at the end of the Term unless Member's Associate Artist membership is timely renewed, Member contemporaneously signs a new fiscal sponsorship agreement provided by, and in a form to be determined by, Live Arts (the "New Agreement"), and Member submits the updated Project materials as required by the New Agreement by the date specified in the New Agreement.
- (b) This Agreement shall terminate if and when the Parties jointly agree that Member can no longer reasonably accomplish the Purposes of the Project.
- (c) If the Purposes of the Project can still be accomplished but either Member (provided that Member has not committed a material breach of this Agreement) or Live Arts desires to terminate Live Arts' fiscal sponsorship of the Project, the Party desiring to terminate the Agreement shall provide the other Party with written notice (the "Termination Notice") that it desires to terminate this Agreement, and such notice shall set forth the reasons for such desire. Within sixty (60) days after receipt of the Termination Notice (the "Transition Period"), the Parties shall use reasonable efforts to agree upon a transition plan ("Transition Plan") for the Project and the Project Funds.
- (d) Notwithstanding the foregoing, Live Arts may terminate this Agreement, based upon a material breach of this Agreement by Member, after providing written notice describing the asserted breach to Member and after Member has failed to substantially cure the asserted breach within fifteen (15) calendar days of receipt of the written notice.
- (e) Live Arts may dispose of the Project Fund in any manner consistent with its charitable purposes and applicable tax and charitable trust laws if the Parties cannot agree upon a Transition Plan within the

Transition Period, or, unless otherwise provided, this Agreement is terminated pursuant to this Section 9.

10. Notices. All reports, approvals and notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if personally delivered, mailed (by registered or certified mail, return receipt requested, if such service is available), postage prepaid, or otherwise sent in a manner designed to elicit a signed receipt of delivery to the party concerned at its address set forth above in the preamble to this Agreement (or at such other address or addresses as Live Arts or Member may from time to time respectively designate in writing).

11. Miscellaneous.

(a) In the event of any controversy, claim, or dispute between the Parties arising out of or related to this Agreement, or the alleged breach of this Agreement, the prevailing Party shall, in addition to any other relief, be entitled to recover its reasonable attorneys' fees and costs. Each provision of this Agreement shall be separately enforceable, and the invalidity of one provision shall not affect the validity or enforceability of any other provision. This Agreement shall be interpreted and construed in accordance with the substantive, internal laws of the State of New York, without regard to any choice of law principles.

(b) Any controversy or claim arising out of or relating to this Agreement, or the breach of this Agreement, shall be determined by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

12. Cooperation.

(a) Member shall cooperate with Live Arts and take such actions as may be reasonably necessary, in each case as promptly as practicable, in furnishing any and all information, including financial information (i) that is required to be provided to the donor of any Project Funds, (ii) that is otherwise required to be provided by Live Arts as a result of this Agreement, or (iii) is reasonably necessary for the performance by Live Arts of the services under this Agreement.

(b) Member agrees to: (i) credit Live Arts in all of Member's self-published promotional materials in connection with the Project with the message, "Made possible with the generous assistance of New York Live Arts," and (ii) allow Live Arts to use Member's name and to disclose non-confidential details of the Project for Live Arts' promotional and publicity purposes.

13. Entire Agreement. This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by each Party to this Agreement.

14. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the respective heirs, executors, administrators, personal representatives, successors and permitted assigns of each of the parties hereto. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any party without the prior written consent of the other



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party, which consent shall not be unreasonably withheld. Any purported assignment or delegation in violation of this Agreement shall be null and void *ab initio*.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be considered one and the same agreement. This Agreement may be executed and delivered by facsimile or other electronic signature by any party to this Agreement, and such signature shall be deemed an original signature and binding for all purposes hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Fiscal Sponsorship Agreement to be duly executed this ____ day of _____, 2022.

MEMBER

Sign: _____

Print Name: _____

NEW YORK LIVE ARTS

Sign: _____

Name: _____

Title: _____