

FISCAL SPONSORSHIP AGREEMENT

This Fiscal Sponsorship Agreement (hereinafter “Agreement”) is made by and between the Puppeteers of America, 310 East 38th Street, Suite 127, Minneapolis, MN 55409 (hereinafter “Fiscal Sponsor”), and _____ (hereinafter “Program”). Fiscal Sponsor is a Minnesota nonprofit corporation located in Minneapolis, Minnesota, qualified as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (“IRC”), EIN: 74-6062478, and classified as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi). Program is an unincorporated association established to oversee the affairs of the project described below. Currently, the principal office of the Program is located in Minneapolis, Minnesota.

RECITALS

A. Fiscal Sponsorship is a common mechanism used in the nonprofit sector that enables individuals and organizations to start new programs and projects without establishing new, separate nonprofit organizations. These fiscally-sponsored programs and projects get their charitable 501(c)(3) status from their Fiscal Sponsor.

B. The Fiscal Sponsor receives charitable donations and grants on behalf of its fiscally-sponsored programs and projects; assists in maintaining the necessary legal and financial infrastructure for all project activities; helps provide necessary insurance(s) to the programs and projects; and, allows project leaders to focus on creating a safe, just, and vibrant world.

C. Fiscal Sponsor’s Board of Directors has approved establishing, at Program’s expense, a restricted fund to receive donations of cash and/or other property designated to support the project known as the “_____” (hereinafter “Program”) and to make disbursements to Program in furtherance of its purpose, which shall be: _____

_____. The program is scheduled to run from _____ (enter start date) to _____ (enter end date). The amount requested for the Program is \$_____ (enter grant request total). Any changes in the Program’s purpose must be approved in writing by Fiscal Sponsor.

D. Fiscal Sponsor agrees to act as the Fiscal Sponsor of Program, which Fiscal Sponsor’s Board has determined will further Fiscal Sponsor’s purpose and charitable goals. Program agrees to execute and operate its own project, but will be at all times subject to Fiscal Sponsor’s direct supervision, discretion, and control.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Term of Agreement. On _____ (the “effective date”), Fiscal Sponsor shall assume operation of Program, which shall continue in effect unless and until terminated as provided herein.

2. Program Activities and Sponsorship Policies. All community programs, public information work, fundraising events and campaigns including crowdfunding efforts, usage of the name “Puppeteers of America” and/or trademark (in whole or in part), processing and acknowledgment of cash and noncash revenue items, accounts payable and receivable, negotiation of leases and contracts (including insurance), disbursement of Program funds (including grants), and other activities conducted by Program shall be the ultimate fiduciary responsibility of Fiscal Sponsor and shall be conducted in accordance with the following policies, beginning on the effective date.

- a. Unless otherwise agreed in writing, all personnel serving Program shall be volunteers and remain uncompensated by Fiscal Sponsor in either an employee or independent contractor capacity.
- b. Unless otherwise agreed in writing, Program’s events and activities shall be fully insured against losses and damages. Fiscal Sponsor will make all reasonable efforts to assist and/or add Program as an additional insured on existing policies.
- c. Fiscal Sponsor agrees to provide administrative support and goodwill to Program as state and federal laws require. Program agrees that, in exchange for the administrative support and goodwill provided by Fiscal Sponsor, Program shall compensate Fiscal Sponsor with five percent (5%) of its gross income. Moreover, Program shall reimburse to Fiscal Sponsor any fees, interest, and other direct expenses Fiscal Sponsor may incur on behalf of Program, including the cost of insurance.
- d. Program understands and agrees that Fiscal Sponsor may reasonably monitor and conduct an evaluation of the Program’s operations under this agreement, which may include visits by representatives of the Fiscal Sponsor to observe the Program’s procedures and operations, as well as to discuss the project with Program’s personnel. In addition, a complete and accurate record of the funds received and expenses incurred under this agreement must be maintained by Fiscal Sponsor and produced to Program at least quarterly. Fiscal Sponsor may, on reasonable notice to Program, audit or have audited the records of the Program insofar as they relate to the activities encompassed by this agreement.

- e. Fiscal Sponsor shall provide Program with limited rights to use its logo and mark(s) as set forth in this Section. Any and all intellectual property provided by Fiscal Sponsor to Program shall remain the sole property of Fiscal Sponsor. Program acknowledges that Fiscal Sponsor is the owner of all right, title, and interest in and to the “Fiscal Sponsor Mark” (defined below) throughout the world in any form or embodiment thereof and is also the owner of the goodwill attached and which shall become attached to the Fiscal Sponsor Mark. For purposes of this Agreement, the term “Fiscal Sponsor Mark” shall mean any and all Fiscal Sponsor provided materials, including all trademarks, service marks, logos, trade names, copyright materials (including but not limited to slogans), other intellectual property and the like. Program acknowledges and agrees that it has not acquired any property rights in or to the Fiscal Sponsor Mark, will not acquire any property rights in or to the Fiscal Sponsor Mark other than the use of the Fiscal Sponsor Mark specifically granted herein, and will not use the Fiscal Sponsor Mark or any similar trademark, service mark or trade name at any time except pursuant to this Agreement and any amendment or supplement hereto executed by Fiscal Sponsor. Program will not knowingly, at any time, do or suffer to be done any act or thing which will in any way jeopardize, dilute, or adversely affect any registration of the Fiscal Sponsor Mark or Fiscal Sponsor’s ownership of the Fiscal Sponsor Mark. Program acknowledges that Fiscal Sponsor reserves all rights not expressly granted to Program hereunder, and reserves the right to revoke Program’s access to and/or usage of the Fiscal Sponsor Mark. Any tangible or intangible property, including intellectual property, obtained from third parties or created in connection with Program, shall be also owned by Fiscal Sponsor and held for the charitable purposes of Program. The provisions of this Section shall survive the termination of this Agreement.

- f. Should Program develop any programmatic materials and/or intellectual property during the fiscal sponsorship relationship, which could include, but would not be limited to: proprietary documents, confidential materials, trademarks, service marks, logos, trade names, copyright materials (including but not limited to slogans), or other items, those programmatic materials and/or intellectual property shall belong to Program, and shall not be retained by Fiscal Sponsor upon termination of this Agreement.

- g. Program may solicit gifts, contributions, and grants in support of Program’s aforementioned mission. Program’s choice of funding sources to be approached, and the text of Program’s fundraising materials/solicitations, are subject to Fiscal Sponsor’s prior written approval. All grant agreements, pledges, or other commitments with

funding sources to support Program shall be executed by Fiscal Sponsor.

- h. Program may use marketing and publicity efforts, and share marketing and publicity efforts with Fiscal Sponsor, in support of Program's aforementioned mission. Program's choice of marketing and publicity efforts, including social media, and the text of Program's marketing and publicity efforts, are subject to Fiscal Sponsor's prior written approval.
- i. Program is expressly prohibited from all direct and indirect competition with Fiscal Sponsor, unless the parties explicitly agree thereto in writing. Program shall have no market exclusivity. The provisions of this Section shall survive the termination of this Agreement.
- j. Program agrees to protect Fiscal Sponsor's tax-exempt status, act in accordance with all state/federal laws, and act at all times with due care/loyalty toward Fiscal Sponsor. Program agrees to immediately comply with any/all written request(s) of Fiscal Sponsor to cease activities which, in Fiscal Sponsor's sole opinion, might jeopardize Fiscal Sponsor's 501(c)(3) tax exempt status, violate the law, and/or damage the goodwill/public image of Fiscal Sponsor. Program further agrees that Fiscal Sponsor may suspend its obligation to make funds available, or terminate this Agreement in its entirety, in the event that Program fails to comply with any such request. Fiscal Sponsor retains the right, if Program breaches this Agreement, or if Program jeopardizes Fiscal Sponsor's legal or tax-exempt status, to immediately return funds to donors, or to withhold the funds via the doctrine of *cy pres*.
- k. Program expressly affirms that its efforts to incorporate as a nonprofit entity and become tax-exempt do not violate the terms of any previous litigation or governmental agreements. Furthermore, Program shall indemnify, defend, and hold harmless Fiscal Sponsor (including its officers, directors, employees, agents, successors, and assigns) against any demands, claims, damages to persons or property, losses and liabilities including reasonable attorneys' fees arising out of or caused by Program's (including its officers, directors, employees, agents, successors, and assigns acting on its behalf) acts or omissions in the execution, performance, or failure to adequately perform Program's obligations under either this Agreement or previous litigation.

3. Delegation. As of the effective date, active management of Program's activities as they relate to the project shall be delegated by Fiscal Sponsor's Board of Directors to the individual members of Program, subject to the oversight and ultimate direction of Fiscal Sponsor's Board of Directors. Acting as Fiscal Sponsor's volunteers, the Program's members shall serve as a subordinate body, or committee, to Fiscal Sponsor's Board of Directors to assist with the fulfillment of the purposes of the Program. In matters governed by this Agreement: (a)

Program's existence as an unincorporated nonprofit association will be solely for the limited purpose of holding, exercising, and enforcing the contractual duties and obligations Fiscal Sponsor may owe to Program under this Agreement, and (b) those participating in Program do not serve as representatives or agents of any funding source, employer, or any party other than Fiscal Sponsor.

4. Restricted Fund / Variance Power. Beginning on the effective date, Fiscal Sponsor shall place all gifts, grants, contributions, and other revenues received by Fiscal Sponsor for the purposes of Program into a restricted account to be used for the benefit of Program's mission, as that mission is defined above. Program shall provide Fiscal Sponsor with periodic financial reports, no less than monthly, as well as upon reasonable request. Neither party shall spend or otherwise obligate Fiscal Sponsor to pay for an amount or amounts exceeding the balance in the restricted fund, nor shall either party authorize or permit anyone to do so. Fiscal Sponsor retains the unilateral right to spend such funds so as to accomplish the purposes of Program as nearly as possible within Fiscal Sponsor's sole judgment, subject to any more specific donor-imposed restrictions, on the charitable use of such assets. The parties agree that all money and the fair market value of all property in the restricted fund be reported as the income of Fiscal Sponsor on Fiscal Sponsor's financial statements and Form 990 tax returns. It is the intent of the parties that this Agreement be interpreted to provide Fiscal Sponsor with variance powers necessary to enable Fiscal Sponsor to treat the restricted fund as Fiscal Sponsor's asset in accordance with Accounting Standards Codification (ASC) paragraphs ASC 958-605-25-25 and -26, formerly expressed in Statement No. 136 issued by the Financial Accounting Standards Board (FASB), or as amended. Because the restricted account is held under the charitable trust doctrine for the purposes of Program, the parties intend that the assets held in the restricted account shall not be subject to claims of any creditor or to the legal process resulting from activities of Fiscal Sponsor unrelated to Program.

5. Performance of Charitable Purposes. In accordance with the policies set out in Section 2 herein, all assets received by Fiscal Sponsor under the terms of this Agreement shall be devoted to the purposes of the Program, within the tax-exempt purposes of Fiscal Sponsor as stated in Fiscal Sponsor's Articles of Incorporation. Expenditures for any attempt to advocate for legislation within the meaning of IRC Section 501(c)(3) shall be subject to limitations imposed by law and/or Fiscal Sponsor, whichever is more restrictive. Under no circumstance shall Program: A) use any portion of the assets to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, B) induce or encourage violations of law or public policy, C) cause any private inurement or improper private benefit to occur, or D) take any other action inconsistent with IRC Section 501(c)(3). Fiscal Sponsor has determined, based on the advice of legal counsel, that the restricted fund is not a donor-advised fund within the meaning of IRC Section 4966(d)(2) as presently interpreted under federal tax authorities.

6. Termination. Either Fiscal Sponsor or Program may terminate this Agreement on thirty (30) days' written notice to the other party, so long as:

- a. Successor Fiscal Sponsor: Another nonprofit organization acceptable to both parties is found that is tax-exempt under IRC Section 501(c)(3), is

not classified as a private foundation under Section 509(a), and is willing and able to sponsor Program. As used in this Paragraph 6, the word “able” shall mean that the Successor has charitable purposes compatible with the purposes of the Program and has the financial and administrative capacity to competently manage the Program. If a Successor Fiscal Sponsor is engaged, the Program must immediately cease using the Fiscal Sponsor Mark, and the name “Puppeteers of America,” or any parts thereof, must be removed from Program’s name and likeness in their entirety without delay. Upon termination, the balance of assets in Fiscal Sponsor’s restricted fund for Program, together with any other tangible and intangible assets held (including programmatic materials and/or intellectual property) and liabilities incurred by Fiscal Sponsor in connection with Program, shall be transferred to the Successor Fiscal Sponsor at the end of the notice period or any extension thereof, subject to the approval of any third parties that may be required.

OR

- b. Independence: Program becomes an independent nonprofit organization having applied for and received its own federal income tax exemption with the Internal Revenue Service. Program shall provide notice to Fiscal Sponsor at the earliest practicable time of the intent to independently incorporate and apply for tax-exempt status from the IRS. If Program becomes an independent nonprofit and receives a determination letter from the Internal Revenue Service, Program must immediately cease using the Fiscal Sponsor Mark and the name “Puppeteers of America” (and any parts thereof must be removed from Program’s name and likeness in their entirety without delay). If Program has formed a new organization qualified to be a Successor as set forth in this Paragraph, such organization shall receive the balance of assets in Fiscal Sponsor’s restricted fund for Program, together with any other tangible and intangible assets held (including programmatic materials and/or intellectual property) and liabilities incurred by Fiscal Sponsor in connection with Program no later than the end of the notice period or any extension thereof.

Upon notice, if no Successor Fiscal Sponsor acceptable to both parties is found within a reasonable time, Fiscal Sponsor may dispose of Program’s assets and liabilities in any manner consistent with applicable tax and charitable trust laws, including *cy pres*. Moreover, if Program ceases operations or abandons its project(s), Fiscal Sponsor may dispose of Program’s assets and liabilities in any manner consistent with applicable tax and charitable trust laws, including *cy pres*. Either party may terminate this Agreement, based upon a material breach by the other party, by giving five (5) days’ written notice to the other party with an opportunity to cure, and any Program assets and liabilities shall be disposed of at the end of the notice period in a manner consistent with the provisions stated above in this Paragraph.

7. Non-exclusivity. It is expressly understood that Fiscal Sponsor is free to engage in other Fiscal Sponsorship relationships during the term of this Agreement, provided, however, that during the term of this Agreement, Fiscal Sponsor shall not engage in activities that interfere with its ability to perform any obligations or responsibilities to Program. Moreover, Program shall have no market exclusivity. The provisions of this Section shall survive the termination of this Agreement.

8. Disclaimer of Advisory Role. Although Fiscal Sponsor shall provide Program with support and advice, it is expressly understood that Fiscal Sponsor is not serving as a tax or other legal advisor for Program. Program hereby agrees and acknowledges that Fiscal Sponsor is not such an advisor, and that if it deems such advisors necessary, Program will obtain its own independent advisors and/or counsel.

9. Notice. Any notice, request, consent, or other communication to any party hereto must be in writing and shall be deemed effective when: delivered in person, sent by facsimile, sent by e-mail (if promptly confirmed in writing), or if mailed by U.S. first-class certified mail, return receipt requested, postage prepaid and addressed to the attention of the undersigned at the address shown in the heading of this Agreement.

10. Assignment. The rights and obligations under this Agreement are personal to each of the parties and are not assignable to any other individual or entity.

11. 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 all parties to this Agreement.

12. Advice of Counsel. Each party hereto, by its due execution of this Agreement, represents that it has reviewed and understands each term of this Agreement, and has entered into same knowingly, voluntarily, and with the opportunity to gain the advice of independent legal counsel. Accordingly, no party shall deny the validity of this Agreement on the ground that the party did not have advice of Counsel.

13. Execution of Agreement. This Agreement may be executed in counterparts. When each party has signed and delivered at least one such counterpart to the other party, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all parties. One fully executed original is to be delivered to counsel for each party.

14. Severability. This Agreement constitutes the product of negotiations of the parties hereto and any enforcement hereof will be interpreted in a neutral manner and not more strongly for or against any party based upon the source of the draftsmanship of this Agreement. 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. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall continue to be fully effective.

15. Waiver of Breach. The waiver of any party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof. Time is of the essence of this Agreement and of each and every provision hereof. The failure of a party to exercise any of its rights under this Agreement shall not be deemed a waiver of such rights.

16. Governing Law, Forum Selection and Consent to Personal Jurisdiction. This Agreement shall be deemed to have been executed and delivered within the State of Minnesota, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Minnesota applicable to contracts. Fiscal Sponsor and Program hereby agree that any litigation action initiated to enforce any provision of this Agreement shall be brought only in a state or federal court located in Chisago County, Minnesota and hereby consent to the jurisdiction of such courts.

The remainder of this page is blank intentionally; the signature page is on the immediately following page.

IN WITNESS WHEREOF, the parties have executed this Agreement and/or caused it to be executed by their duly authorized representatives:

Approved by:

Puppeteers of America (“Fiscal Sponsor”)
310 E 38th Street, Suite 127, Minneapolis, MN 55409

By: _____
NAME, Board Chair

Date: _____

By: _____
NAME, Finance Officer

Date: _____

“Program” (enter name and address of Program)

By: _____

Date: _____