

## **Policies and Procedures Documentary Educational Resources**

This document describes Policies and Procedures for Fiscal Sponsorship through Documentary Educational Resources (DER). Our program is designed to:

- Minimize the administrative burden on filmmakers, and
- Meet DER's charitable and legal obligations as a 501(c)3.

DER may, from time to time, update our policies and procedures. Fiscal sponsors will be informed of changes by email, and are expected to review and abide by the most recent Policies and Procedures.

### **FISCAL SPONSORSHIP: THE BASICS**

Fiscal Sponsorship is a service allowing filmmakers to receive tax-deductible donations and foundation grants through a 501(c)3 nonprofit entity. It is a legal relationship between filmmaker and DER, in which DER is the responsible fiscal entity for the Project.

- The filmmaker is expected to understand and uphold DER's mission and nonprofit status.
- The filmmaker may use DER's name and credentials in fundraising, outreach and publicity efforts on behalf of the Project. DER reserves the right to review Project materials. Filmmakers will receive a letter of support from DER, which may be used for fundraising purposes.
- The filmmaker agrees that DER will be identified as the "fiscal sponsor" on all Project materials, including funding proposals and marketing and promotional materials, and included in the final film credits.
- Filmmaker and DER are independent contractors with respect to each other, and this agreement shall not be deemed to create any relationship of agency, partnership, or joint venture between the parties hereto. Nothing in this agreement shall constitute the naming of Filmmaker as an agent or legal representative of DER for any purpose whatsoever.

DER re-grants all contributions to the filmmaker for allowable expenses on behalf of the Project, less the administrative fee.

- The filmmaker can use funds solicited for the project in accordance with budgets approved by DER and Project funders and submitted in advance to DER.
- None of the Project funding shall be used to carry on propaganda or otherwise attempt to influence legislation or participate in or intervene (including, without limitation, the publishing or distributing of statements) in any political campaign on behalf of or in opposition to any candidate for public office, all within the meaning of and in compliance with Internal Revenue Code section 501(c)(3).
- Gifts, contributions, and grants solicited for the Project must be made payable to "Documentary Educational Resources, Inc."
- **Administrative fee:** DER takes an oversight and management fee of five percent (5%) of all check and cash contributions, six percent (6%) for federal grants, and eight percent

(8%) of credit card and Paypal payments for all grants, donations, and gifts received on behalf of the Project.

New Project fees are as follows.

- DER charges a one-time project initiation fee: \$100 fee per project, for all accepted proposals.
- Quick turnaround fee: There will be a \$25 fee applied to any project for which the filmmaker requests review of a fiscal sponsorship application 5 or fewer days prior to a grant or other deadline.
- Proposal consultation fee: There will be a \$50 fee for a 30-minute consultation, providing feedback for strengthening a submitted proposal. This fee is waived for projects accepted into the program.

DER issues 1099s to filmmakers and their contractors who have received \$600 or more directly from DER for services rendered (e.g., for research, production, editing, and other work completed). LLCs will not receive 1099s unless listed as a sole proprietor on your W-9.

## **FUNDER RELATIONS**

DER enters into all grant agreements, pledges, or other commitments with funding sources, which require a non-profit organization, at DER's sole discretion. However, filmmakers are responsible for covering the costs of any reports or other compliance measures required by Project funders.

- The filmmaker and DER hereby acknowledge that DER is bound by certain requirements and obligations to funders. Filmmaker agrees to abide by all requirements of DER and funders connected with the implementation, administration and reporting, financial and otherwise, of the project.
- The filmmaker acknowledges and represents that Filmmaker has carefully read the terms and conditions applicable to any grant(s) in connection with the Project.
- As determined by funders, DER will be the main correspondent. This includes transmitting all required reports to funding sources, including interim cash transactions and final financial reports; obtaining prior approval from funding sources, if required, for foreign travel and equipment purchases; and updating funders of project changes.
- The Filmmaker's choice of funding sources and the content of Filmmaker's fundraising materials are subject to DER's prior written approval. Filmmaker shall notify DER in writing regarding its list of Project funders and provide copies of all solicitations made with respect to the Project. All grant award letters, agreements, pledges, or other commitments with Project funders to support the Project through DER shall be provided to DER for review and approval.
- Acknowledging the support of all funding sources in the film credits and publicity materials in form and substance satisfactory to all such funding sources.

Upon receipt of donations from individuals, DER will provide a letter recognizing the donation.

## **PROJECT ACCOUNTS: THE BASICS**

DER will deposit all funds received by DER for the Project in a bank account controlled by DER. A Project QuickBooks account will be created by DER for tracking project income and expenditures.

- Funds are provided to filmmakers upon receipt of a completed invoice (on an advance or reimbursement basis). Funds requested must reflect the expenses as detailed in the project budget.
- DER will monitor the expenditure of funds by the Project to ensure adherence to the approved budget and applicable reporting requirements, and will approve the release of funds to the Project only when previous advances have been properly accounted for.
- DER will report any potential problems, inconsistencies or lack of accountability to outside agencies as they may require or as may seem desirable, including without limitation the conducting of Project audits in accordance with applicable government auditing procedures.
- DER retains full discretion and control over the use of such funds to accomplish the charitable purposes of the Project.

## **PROJECT ACCOUNTS: FILMMAKER RESPONSIBILITIES**

Filmmakers are expected to:

- Retain all financial records for three (3) years, or longer if required by funders, following the submission date of the final financial report.
- Ensure that all bookkeeping, fundraising and expenditure practices, records and documentation are in accordance with (a) applicable funder requirements, and (b) Internal Revenue Service requirements applicable to DER in maintaining its status as a publicly supported tax-exempt organization.
- Cooperate in any internal or external audit or financial review authorized by DER or required by any state or federal government or agency thereof, by preparing and submitting financial records, receipts and reports, and attending meetings as requested by the appropriate Officer.
- Adhere to any investment agreements, budgets, and debt, loan and deferment schedules, for the Project,
- Account for money resulting from distribution, as required by funder,
- Honor all deferment, debts and loans incurred by the Project; and distributing Project income according to the requirements of funding sources and not incurring any indebtedness or deferrals without the prior written approval of the DER and as applicable, any Project funders.
- Provide access to books and records to DER upon written request.
- Return to DER any portion of the distributed funds, which is not used for the Project.

## REPORTING

The **minimum reporting requirements** expected of all filmmakers are an annual update of Project progress to DER and a final report:

- The filmmaker is expected to complete a brief annual report to update DER of the project status. Reports are due the end of the calendar year.
- The filmmaker is expected to submit final project and financial reports at project conclusion.

**Additional reporting** to DER may be required at the request of DER or due to changes in the Project.

- The filmmaker may be asked by DER to submit reports of actual expenditures on any aspects of the Project.
- The filmmaker must report any proposed major changes in concept, timetable, budget or debts and deferrals to DER, at the time at which such changes are made, and not implement any such changes unless they have been approved by DER and any applicable third party, such as government funding agencies (and Filmmaker hereby acknowledges and agrees that the scope of the Project shall not be changed without the prior written approval of the funders).
- The filmmaker must notify DER of any impending or threatened legal action in connection with any aspect of the Project.

**Reports to funder organizations** may also be required. Filmmakers are expected to prepare progress, financial and other reports as requested by Project funders for submission by DER

- The filmmaker is expected to submit in a timely manner all interim and end of grant reports to DER for transmittal by DER to funders of the Project or if so required by DER, transmit such reports directly to funders of the Project and submit a copy of such reports to DER.

## PERMITS AND INSURANCE

Filmmakers are expected to obtain and comply with all necessary permits, permissions, releases, and certifications (including without limitation Department of Labor wage standards, non-discrimination, debarment and suspension and lobbying certifications and other disclosures required by funders).

Filmmakers are expected to obtain the following insurance coverage, as appropriate:

- *standard production and general liability* to cover personal injury and property damage that might occur during the course of the Project naming DER as an additional insured and provide DER with a Certificate of Insurance;
- *worker's compensation* as required by state law;
- *errors and omissions* prior to broadcast, to cover claims such as libel, copyright infringement, invasion of privacy, and slander, naming DER as an additional insured.

## **PROJECT COMPLETION / CLOSING YOUR ACCOUNT**

Fiscal sponsorship of your project ends when you have closed out your account with DER. This may be when you have completed your film or completed outreach, at the point at which you have ceased fundraising and expenditure from your DER account. The following steps are required to close out a fiscal sponsorship account.

- The Filmmaker must inform DER of the intention to close the project account.
- The Filmmaker must submit two (2) DVD copies of the completed Project or digital file of the film to DER, together with all final reports. DVD copies may be used by DER for promotional purposes, and for screenings for the Board of Directors, funding sources and others within DER's organization. Filmmaker will be notified prior to such use whenever possible.
- The Filmmaker must complete a feedback form on the fiscal sponsorship program, including suggestions to DER for improving the procedures for handling sponsored projects.

Note that Fiscal Sponsorship through DER in no way implies DER's rights or obligation to distribution of The Project. However, DER will consider a film for distribution at the request of the Filmmaker.

## **OWNERSHIP, ARTISTIC CONTROL & CREDIT**

All intellectual property rights in connection with the Project are retained by the Filmmaker.

The Filmmaker retains control of artistic production and postproduction decisions; however the Filmmaker is expected to notify DER of proposed major changes in content or approach to the Project to ensure that such changes are consistent with DER's mission and to funders.

The Filmmaker retains custody of the original film footage and outtakes, sound recordings and research materials gathered during film production and paid for by the Project.

The Filmmaker agrees to give DER permission to use your project in our materials and website.

## **REPRESENTATIONS AND WARRANTIES:**

Both parties represent and warrant that (a) each has the legal right and authority to enter into this agreement and to observe and perform fully each party's obligations set forth herein; (b) each party's performance under this agreement and the rights granted by each party herein will not conflict with or violate any commitment, agreement, or understanding each party has or will have to or with any person or entity; (c) they will each comply with all applicable laws and regulations in connection with the Project and its activities relating thereto; (d) they shall not do business with any organization or person that has been debarred or suspended by any federal department or agency and shall impose the same restriction on any other party with whom they shall do business in connection with the Project; and (e) they shall promptly notify each other in writing of any threatened or pending legal action arising from or relating to the Project. No representation or warranty made by either party in this agreement or any other document provided to either party by the other contains any untrue statement or omits to state a material fact or, in light of the circumstances, is misleading.

Filmmaker further represents and warrants that the production, distribution or use of the Project will not create any liability of any kind or nature for DER or constitute or result in a

breach or violation of any commitment, agreement, or understanding Filmmaker has with any person or entity or violate any applicable law; and that Filmmaker will maintain and furnish to DER all necessary permits, permissions, releases, and certifications including, without limitation, Department of Labor wage standards, non-discrimination and suspension and lobbying certifications and other disclosures required by law or any Project Funders.

## **INDEMNIFICATION**

Filmmaker hereby agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless DER, its officers, directors, trustees, employees and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorneys' fees and expenses) directly, indirectly, wholly, or partially arising out of or incurred by reason of: (i) the inaccuracy, alleged breach or actual breach of any representation, warranty, agreement, obligation, covenant or undertaking made by Filmmaker hereunder; (ii) any act or omission of Filmmaker, Filmmaker's employees, contractors, licensees or agents in connection with the Project or Filmmaker's use of the funds furnished pursuant to this agreement; or (iii) the production, distribution, commercialization or other exploitation of the Project.

**Debt:** DER will not be liable for, and Filmmaker shall hold DER harmless and indemnify it from and against any debts in excess of available Project funds. As part of the annual DER report, Filmmaker will report the ongoing status of "hard debt" and "deferrals/soft debt."

## **TERMINATION**

Either party may terminate this agreement for any reason upon thirty (30) days prior written notice to the other party, subject to the terms of this agreement.

DER may terminate this agreement for cause effective immediately upon delivery of written notice to Filmmaker if:

- Filmmaker materially breaches this agreement and such breach is not cured within fourteen (14) days after written notice of the specific breach is given by DER to Filmmaker, provided such breach is capable of being cured;
- Filmmaker's conduct, in DER's reasonable discretion, jeopardizes DER's legal or tax status;
- If legal or financial problems identified by DER have not been resolved in a reasonable and timely manner;
- Filmmaker ceases to be affiliated with the Project; or
- Filmmaker dissolves, ceases business, becomes bankrupt or insolvent, or ceases to be eligible to receive Project funds under applicable government funding regulations.

In the event of any termination for any reason hereunder, Filmmaker shall deliver to DER a status report on the Project, including a financial report as of the date of termination, and shall fulfill all obligations hereunder.

In the event of termination hereunder DER will convey all property, rights, privileges, duties, liabilities and debts of the Project including all funds received by DER in respect of the Project less the administrative fees (collectively, the "Continuing Project"), to a tax-exempt 501(c)(3) organization with a like mission. If no funds have been expended, then all funds will be conveyed.

If DER fails to convey the Continuing Project to such an organization, then the parties agree to petition the Superior Court or any other court of competent jurisdiction in the Commonwealth of Massachusetts to choose a successor, pursuant to the provisions of Chapter 180 of the Massachusetts General Laws, or any successor thereto.

In the event of termination for cause, DER may do one or more of the following: (A) withhold or withdraw any Project funds not yet disbursed to Filmmaker except that DER shall pay Filmmaker for any costs and/or expenses which have been spent or committed to the date of termination so long as Filmmaker provides DER with documentation acceptable to DER, (B) demand from Filmmaker the immediate return of Project Funding that has not been spent in accordance with the terms of this agreement, (C) spend such Project Funding so as to accomplish the purposes of the Project within DER's sole discretion and/or (D) assign the Project to another 501(c)(3) organization that can oversee the Project in lieu of DER, with funder approval of such transfer.

## **LAW AND JURISDICTION**

This agreement, and the rights and responsibilities of the DER and Filmmaker relating to and arising under it, shall be governed and interpreted in accordance with the laws of the Commonwealth of Massachusetts (but not the conflict of law provisions thereof) and the parties hereto agree to submit to the jurisdiction of the state and federal courts of the Commonwealth of Massachusetts to resolve any disputes arising hereunder.

## **MISCELLANEOUS**

Filmmaker and DER understand and agree that this agreement represents the entire understanding between the parties with respect to its subject matter, and that no changes to this agreement will be made without the written consent of both parties. A waiver by either party of any breach or default by the other party shall not be construed as a waiver of the same or any other breach or default by such party. If any provision of this agreement shall be held void, voidable, invalid, or inoperative, no other provision of this agreement shall be consequently affected, and accordingly, the remaining provisions of this agreement shall remain in full force and effect, as though such void, voidable, invalid, or inoperative provision had not been contained herein.

Filmmaker may not transfer or assign this agreement or any of Filmmaker's duties or obligations hereunder to any third party without the prior consent of DER.

Whenever notice is required to be given or may appropriately be given hereunder, such notice shall be in writing and shall be delivered by hand, express mail or courier, or registered or certified mail (return receipt requested), to the person or parties to whom intended at their addresses first stated above. Notice shall be deemed given when delivered.