Memorandum of Understanding (MOU)

**Between Client and FISCAL AGENT**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter referred to as **Client**) and **FISCAL AGENT** (hereinafter referred to as **FISCAL AGENT**) wish to define their relationship by way of this Memorandum of Understanding (hereinafter referred to as MOU).

**Whereas, Client** is a organization whose mission is \_\_\_\_\_;

**Whereas, FISCAL AGENT** is a 501 (c)(3) statewide non-profit organization whose mission includes the provision of temporary fiscal agent status for groups performing volunteer activities on behalf of trails in New York State;

**Whereas, Client’s** activities are considered by **FISCAL AGENT** to be compatible with the mission of **FISCAL AGENT**;

**Whereas, Client** has requested **FISCAL AGENT** to be a fiscal agent for the duration of this MOU for specific funds donated to the **Client** by corporate, individual, or other sources;

**Whereas,** “fiscal agent” is defined as the provision of custodial account, fiscal, and record keeping services under the auspices of **FISCAL AGENT** and its federal and state non-profit status;

**Whereas,** “custodial funds” are defined as those donated or grant-originated monies provided to **Client**, in accordance with all pertinent laws and regulations that are deposited in a **FISCAL AGENT** bank account on behalf of **Client**;

**Whereas,** **FISCAL AGENT** has the requisite expertise and knowledge required in the keeping of both fiscal books and records, and the maintenance of a fiscal agent relationship with **Client**, and further, **FISCAL AGENT** desires to provide temporary fiscal agent services for **Client** as requested;

**NOW THEREFORE,** **FISCAL AGENT** and **Client** mutually agree as follows:

1. **FISCAL AGENT** shall provide the following services to **Client**:
   1. Provide fiscal agent services for custodial funds specified above allocated to **Client** and deposited in a **FISCAL AGENT** account;
2. Deposit custodial funds in a group custodial account, which will be included in **FISCAL AGENT’s** annual audit;
   1. Release or expend said custodial funds as appropriately directed by **Client**. **FISCAL AGENT** will not release said custodial funds without prior written authorization from **Client**. However, **FISCAL AGENT** specifically reserves the right to refuse to release or expend any funds within its group custodial account should the requested expenditure be illegal, in **FISCAL AGENT’s** reasonable judgment, or jeopardize the 501 (c)(3) status of **FISCAL AGENT**;
   2. Conduct all required reporting in a timely manner;
   3. Provide bookkeeping services to **Client**. Said services will include:
      1. the production of mid and year-end financial reports,
      2. maintenance of a general ledger,
      3. processing and depositing of cash receipts,
      4. any necessary cash disbursements,
      5. adherence to reporting requirements relating to custodial funds.
      6. a written acknowledgement for any single contribution of $250 or more or the threshold currently set by the IRS.
   4. Apply account management fees in accordance with *Schedule B* 1. attached hereto. All interest earned on custodial funds will be retained by **FISCAL AGENT**.
3. **Client** shall:
   1. Fully adhere to and comply with all applicable fundraising laws and regulations, and conduct business in accordance with the Recommendations for Fiscally Responsible Action as described in *Schedule A*.
   2. Fully adhere to and comply with all contractual agreements or obligations entered into by **Client** that regard any or all funds in the custodial account, and make **FISCAL AGENT** immediately aware of any such contractual agreements or obligations.
   3. Not refer to or use **FISCAL AGENT’s** name in any written materials, proposals, or solicitations, except as noted in *Schedule B* 2.a., without the express prior written approval of the Executive Director of **FISCAL AGENT**.
   4. Conduct all reporting as required by third party sources and **FISCAL AGENT** in a timely manner, including the filing of IRS Form 990 if at any point in the duration of this agreement **Client's** revenues exceed the gross receipts test identified in the Internal Revenue Code.
   5. Identify any individual(s) responsible for authorizing all expenditures from the **Client's** custodial account, via an authorized Check Request Form provided by **FISCAL AGENT** and in accordance with any other procedures developed by **FISCAL AGENT**. Said individual(s) on behalf of **Client** shall be solely authorized to make such demands for expenditures from **Client's** custodial account.
   6. Indemnify **FISCAL AGENT**, its directors, officers and staff against all judgments, fines, and amounts paid in connection with any claim asserted against a director, officer or staff member of **FISCAL AGENT** who has acted reasonably and in good faith in carrying out the responsibilities stated or otherwise implied in this MOU.
   7. Conduct management of all programs and services associated with its operations, including selection and monitoring of consultants, and agree that these activities are the sole responsibility of **Client**.
4. **Client** is an independent organization whose decisions, actions, and activities or that of its representatives do not necessarily represent the decisions, actions or positions of the Board of Directors or staff of **FISCAL AGENT**. Similarly, the decisions, actions of the Board of Directors or staff of **FISCAL AGENT** or its representatives do not necessarily reflect those of **Client**.
5. This MOU states the terms and conditions of **FISCAL AGENT’s** Fiscal Agent program to **Client** only, and does not express nor imply, in any way, **FISCAL AGENT’s** endorsement of any decisions, actions, proposal, fundraising activities or any other activity undertaken by **Client**.
6. Unclaimed funds that are remaining in the **Client**'s custodial account for one year after the termination of this Agreement shall be returned, if appropriate and feasible, to the source or will become the property of **FISCAL AGENT**.
7. This agreement may be amended or extended by mutual agreement, in writing, at any time.
8. This agreement shall be in effect until either party elects to terminate, with or without stated cause, when written notice of such termination is provided by regular mail.

The parties are in agreement on this date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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*Authorized Representative Executive Director*

*Print Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

**Client \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ FISCAL AGENT**

**Schedule A**

**RECOMMENDATIONS FOR FISCALLY RESPONSIBLE ACTION**

1. **Financial Management Standards**

Participating organizations are expected to exercise prudence in their financial practices; maintain accurate records; comply with generally accepted accounting principles; be respectful of the intent and desire of members, donors and prospective donors; and act in ways that ensure that the organization's financial resources are used solely in furtherance of its mission.

1. **Financial Accountability**

* Operate in accordance with the annual budget that has been submitted to and reviewed by FISCAL AGENT prior to the beginning of each fiscal year.

**3) Fundraising Activities**

* Fundraising costs should be reasonable in terms of a percentage of total revenue collected.
* Fundraising methods should promote the public's trust in the stewardship of funds collected.
* Solicitation, promotional materials, and grant applications should be accurate, honest and ethical. All such materials should clearly identify the organization, its mission, and the intended use of solicited funds.
* Fundraising materials should state that FISCAL AGENT is a 501(c)(3) not-for-profit organization that serves as the organization’s fiscal agent and as such all contributions are tax deductible to the fullest extent of the law.
* Any known intentions of a donor or grant source should be followed to the greatest extent possible with respect to the use of the funds. All correspondence from the funding source related to intent and use of funds must be submitted to FISCAL AGENT. Participating organizations are expected to fully comply with all donor/grantor requirements and to do so with complete accuracy.
* All statements an organization makes in its fundraising activities or grant applications about the use of the funds should be honored or renegotiated.
* Organizations should only use the services of professional fundraisers who are registered with the Office of New York State Attorney General, Charities Division. Consultants should not be paid on a percentage of amount raised or other commission formula.
* Organizations shall maintain control over any volunteers, consultants, contractors or other organizations or businesses that are known to be soliciting contributions on the behalf of the organization.

**4) Donor Relationship and Privacy**

* Organizations shall respect the privacy of donors and safeguard the confidentiality of information that a donor would reasonably expect to be kept private.
* Organizations should provide individual donors with an opportunity to maintain anonymity.
* Organizations should receive written permission from donors before including any information about them in any mailing lists that are sold, rented or exchanged and should respect the requests of donors to curtail mailings or telephone solicitations from in-house lists.
* Solicitations should be respectful and free from coercion, undue influence or excessive pressure.
* Organizations shall acknowledge all donations in writing.

**Schedule B**

**1) Account Management Fees**

* FISCAL AGENT will assess account management fees of 2% of every deposit at the time of deposit.
* FISCAL AGENT will review each account annually and impose an additional fee of
  + 1% of average daily balance for the year for 20-40 total transactions (deposits and disbursements) within the year
  + 2% of average daily balance for the year for more than 40 total transactions (deposits and disbursements) within the year

**2) Protocol for Deposits and Disbursements**

* 1. **Deposits**
* Deposits should be submitted to Fiscal Agent Program, FISCAL AGENT, 29 Elk Street, Albany, NY, 12207 for deposit to the organization's account.
* Checks should be made out to FISCAL AGENT with the Organization's name on the memo line. Do not submit cash.
* The standard deposit transmittal form should accompany all deposits. All individual contributions of $250 or more must be clearly itemized and identified. A copy of the deposit slip will be mailed to the client organization verifying the actual deposit.

* 1. **Disbursements**
* **Disbursements** should be requested by completing the standard check request form. All information on the form must be completed and signed by the person identified by the organization in the Memorandum of Understanding as having that authority to sign the form. Attach pertinent information to justify the expenditure such as invoices, receipts, etc.
  1. **Grants**
* Client must inform FISCAL AGENT in writing of all grant applications at least 24 hours before submittal.
* Client must define FISCAL AGENT as its fiscal agent in all grant applications.