



BUILDING ETHICAL AND EQUITABLE PARTNERSHIPS IN THE PERFORMING ARTS

First, the difficult part.

The world is facing an extraordinary array of challenges as nations and economies struggle through the depths of the COVID-19 pandemic. In particular, the performing arts field continues to weather a long, brutal chapter of disruption due to the international crisis.

In March 2020, the whole world acknowledged the threat of the virus and the shutdown commenced.

Our venues closed.

Our shows stopped.

Our touring companies came home.

Two months after we began to grapple with COVID-19, another event sent shockwaves through our systems of working. George Floyd was murdered. We know that racism is not new. White supremacy culture is not new. The systemic injustice done to our BIPOC colleagues, our LGBTQ2SIA+¹ colleagues and our colleagues with different neuro-and physical-lived experiences has happened for years and continues during the pandemic. But something about this moment seemed to magnify things. And reminded us that we CAN change things. Our ways of life changed in an instant---why can't we start making our theatres, offices, stages and rehearsal halls more just during this time, too?

And now, here we are, the pandemics, both viral and racial, have affected all of us in the performing arts industry to some measurable degree: some of us have disappeared completely, some of us have been forced to furlough and for the rest of us, the future remains uncertain.

¹ Lesbian, Gay, Bisexual, Trans, Questioning/Queer, 2 Spirited, Intersex, Asexual, Plus (other non-hetero orientations or genders).

In the immediate wake of the shutdown, we witnessed a field-wide battery of artist engagement² cancellations. The economic pressures on all parties---regardless of the size of the artist group, institution, or company---were sudden and unsparing.

For some colleagues, that period of cancellation and negotiation went as well as it could, given the surrounding calamity, but for others it was a frustrating and often devastating period---one in which artists, agents, managers, and presenters of all types felt, in some way, unfairly undercut by enacted force majeure contract clauses. Enough parties communicated their concerns to APAP leadership to elicit a response. In July 2020, APAP formed a task force composed of representative members from across the field.

Our group was originally formed to review and develop a guide for equitable practices in contract and force majeure agreements. Initially, it seemed straightforward, yet as we proceeded, we began to realize that the discussions around force majeure were actually reflective of bigger questions about our field. Who holds power in these negotiations? How do we work with each other to achieve what is financially equitable when \$5000 does drastically different things to different parties' bottom line?

We found ourselves circling a more universal question: What collective foundations must we *share* in order to ensure equitable, long-term partnerships in the arts? The sustainable future of our shared arts ecosystem is at stake. If enough artists, managers and independent producers simply can't survive and stay in our community, it will severely damage the entire industry long term. Survival of the fittest does not have to dictate our future. We have a chance now to build it back better, together. This is an invitation to do just that.

A horizon.

During this time of deconstruction and inevitable rebuilding, we want to find more sustainable and fair ways of continuing the vital work of performing arts, whether it's happening in schools, clubs, theaters, performing arts centers, community centers, open fields, or in dorm rooms. We believe all of us got into this work because we are obsessed, on some level, with the power of connecting art with communities, whether our reference point is Alvin Ailey or Martha Graham, Luis Valdez or Tanya Tagaq, Andrew Lloyd Weber or J.S. Bach, James Luna or Meredith Monk, or Nina Simone or Kendrick Lamar.

This document serves as an invitation to how we might embrace relationships in this industry consistently built **upon ethical, equitable, and transparent practices**. How can our work **always** take each party's interests and needs to heart? How can we better communicate the true costs and opportunities for all sides of an engagement: what do an artist, an agent, a manager, a

² Engagement: (n) the act of engaging or the state of being engaged; involvement. A term encompassing the lifecycle of stages of work and creation before, during, and after an artistic performance.



producer, a presenter, an arts worker, an audience member and a community need in order to thrive and how can we achieve that outcome in every situation?

We invite you to join us in committing to action. Join us by committing to deploying ethical, equitable and transparent partnership practices. This is not a one-time effort, but rather, the start of an ongoing process and impactful campaign aimed at long-term, sustainable, fieldwide change.

This is a commitment to cultivating a new culture where artist, agent, presenter, and producer partnerships evolve as long-term relationships as opposed to strictly transactional ones. This new culture requires a different approach to contracting, and of finding ways to balance legal frameworks and requirements with partnerships and human considerations.

The new signposts

We work in a collaborative and diverse industry. There is no such thing as a one-person show.

When considering how to move forward as colleagues, it is vital that we move forward with information and mutual understanding in true partnership with compassion, care and empathy

We must listen and **hear** each other.

We must remember how to communicate with one another.

And we must value having a conversation before making a decision.

Equitable is a knot of a word. It is twisty and can look different from every angle, but at the end of the day, a knot is a unifier. It keeps two (or three or four or more) parts together. Some people hear it and think it means everyone gets the same. Some people hear it and think it means that they will get less.

But equitable means that all parties come away from the experience with the resources they need to thrive. And in these times when we're working to dismantle systems and center racial equity, this is also the time to redesign our overall practices and systems to be anti-racist.

It is important to promote transparency in all of our processes. Trust must be the basis of our relationships and how our work continues. Presenters connect to their communities. In turn, agents, managers and producers help to bring to those venues the artists who engage and inspire those communities. Resources---practical, intellectual and emotional---are exchanged at all levels. It is imperative that we communicate precisely what is being exchanged and what it costs. This transparency, vulnerability and trust are vital to moving forward together.

In this guide, you will find resources, provided by your colleagues, which you can use as you begin the work of reimagining contracting and pursuing your own equity and anti-racist

practice. These resources have been worked on collectively and throughout many months by many professionals across the field.

Steps you can take to ensure a more sustainable future for our field:

As we work towards creating a sustainable arts ecosystem, how do we keep transactional interactions ethical?

1. Adopt more equitable language in your contracts.

Language is important. Defining contractual terminology so we know what, for example, “mutually agreeable” or “amicable” means to each other and in our partnership to ensure mutual understanding and consensus. We should use language that is fair to all parties.

Redefine performances as *engagements* because an engagement begins upon a company’s acceptance of the engagement which includes the company investing in goods and services in preparation for the performance and any subsequent community engagement activities, marketing efforts, etc. whether live or virtual. *Engagement* allows an open term to assign value to services rendered in advance of a final performance³.

Use anti-racist and gender inclusive language. Create riders or addenda addressing disability access, intersectionality, decolonization, codes of conduct, etc.

Address the health and safety of performers, audiences, staff and volunteers if moving forward with the engagement, and include COVID-related protocols and considerations in the contract. Incorporate these into technical and hospitality riders, throughout the contract, or add a safety and sanitization rider or addendum.

2. Advocate for and model greater transparency around fees.

Redefine stages of work, thus diversifying payment structures for artists, producers, agents, and managers. Honor the steps of engagements by restructuring payment plans. Diversify when artists, producers, agents and managers will have access to fees so they can support their art.

Advocate for and model transparency around fees, including virtual content fees, the breakdown of how resources flow, how project budgets are put together. This is important for parties on all sides of the contract.

³ Dance/USA Joint Working Group: Equitable Partnership



Use terms like “first payment” instead of “deposit,” and determine with each contracted payment what is or is not refundable. If your institution does not allow for advance payments, non-refundable deposits, are there alternative ways to pay artists? Consider making a commissioning payment, residency payment or reimbursement payment for expenses incurred.

3. Consider alternatives to invoking force majeure.

As we move through a period of no capacity to limited capacity to eventual full capacity, what do engagements look like? How does hybridization or the digital component of performance fit in? Force majeure, as we have seen during the pandemic, does not just mean postpone, or cancel, or move forward with the engagement. There is a lot of grey area in between, and it’s worth figuring out together how you can still make the engagement work. Innovation is a big part of that and recognize that there is no one way to do this.

As you reschedule engagements with artists, managers, and producers, consider building in terms that provide transparency on what each party needs to be made whole, including options that consider adequate compensation for the preparation and digital execution of digital performances and community engagements.

Include and address the health and safety of performers, audiences, staff and volunteers prior to and during the engagement.

Reframe force majeure clauses and define how in unforeseeable events, such as COVID-19, parties can join together in discussion about mutually beneficial actions.

Additional resources to do this work:

Here you will find guidelines, examples and other tools to inform steps toward building more equitable relationships. The following resources were created through a rigorous process by a diverse group of industry professionals who held *equity, partnership, and innovative reimagining* as guiding principles for shifting our performing arts culture from transactional to long term equitable partnerships.

The spirit behind the creation of the [Dance/USA Joint Working Group: Equitable Partnership document](#) was to gain a greater understanding of equity amongst our colleagues in the field, through collaboration, conversations and working in good faith. Members of Dance/USA, comprised of presenters, agents, managers, producers and promoters formed a Joint Working Group to specifically address the contracting and force majeure process. We have been working collectively to outline suggested practical principles and practices which we feel can support a more sustainable future, benefiting everyone in the field. The document will be accessible via the Dance USA website.

Artist, choreographer, cultural activist, and writer Emily Johnson shares her [Decolonization Rider](#) as one tool to promote the inclusion of Indigenous and BIPOC artists in artistic programming, promote relationships to local Indigenous Nations and use of Land Acknowledgements, pathways that address and make reparations, and one step in a process towards decolonization.

[Creating New Futures Document: Working Guidelines for Ethics & Equity in Presenting Dance & Performance](#) is a “living document” that attempts to frame principles and guidelines for conversations within the dance and performance field to shape our futures in light of the extraordinary chaos and disruption caused by COVID-19. The document addresses concerns regarding cancellations and what future work, funding, survival might look like. More pressingly, it looks beyond the present moment to address long standing inequities, deficiencies, and power imbalances in the field, which directly reflect the capitalist and neoliberal structures of the broader culture. The document is, ultimately, a call for radical action.

Glossary of Terms:

Offer and Acceptance - The formation of a contract, often a specific proposal. The acceptance of the offer provides structural foundation for the contract.

Letter of Intent - A document outlining the terms for both parties before a formalized agreement is in place. The letter states their intention to enter into a contract. These are generally not binding or enforceable, but allow parties to specify and agree on terms.

Compensation and payment terms - Terms generally based on services or a scope of work to be completed over a period of time. Not limited to the engagement, these terms can include work prior to the engagement, the engagement itself, and post-engagement, allowing for payments to be spread out over time.

Compensation and payment terms can include: remounting commissioning, commissioning, residency activities, curricular development and co-teaching, donor stewardship events. etc.

We encourage institutions that traditionally do not make payments until after the engagement to rethink how to frame “services are rendered” in their contracts while managing to stay within their governing laws and regulations. Finding ways of adjusting payment terms and provide payments in advance of the engagement or performance will provide more long-term stability for artists, agents and managers, producers, technicians and other contract-based performing arts workers working through the lifespan of a touring production.

Engagement - Refers to the period of preparation, communication and activity between the artist, agents, managers, producers, and presenters, which includes but is not limited to contracting, advancing technical and residency activity details and ultimately completing a final performance. Thus, we are making the suggestion to revise the contract terminology from “Performance” to “Engagement.”⁴

Engagement activities - All activities that will take place according to the agreement or contract. These can include: public performance(s), educational activities, donor events, talkbacks, etc.

Mutually agreeable - Typically found in an agreement at the end of a statement that defines a scenario which requires conversation between the parties involved in the agreement, in order to design and settle on a proposed action that is consensual.

Force majeure - Provision commonly found in contracts that frees both parties from obligation if an extraordinary event prevents one or both parties from performing. These events must be unforeseeable and unavoidable, such as a natural disaster, war or riot.

Breach of contract - A violation of or failure to perform a contractual obligation.

⁴ As defined in the document Dance/USA Joint Working Group: Equitable Partnership



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