

NEW YORK STATE COVID-19 PANDEMIC SMALL BUSINESS RECOVERY GRANT PROGRAM

APPLICANT CERTIFICATION

In connection with the New York State COVID-19 Pandemic Small Business Recovery Grant Program (the "Program") funded by the State of New York (the "State") and administered by the New York State Urban Development Corporation d/b/a/ Empire Development ("ESD"), the undersigned, constituting an authorized representative of the below-referenced applicant business (the "Applicant"), acknowledges and agrees on behalf of the Applicant, that the State, ESD, and B.S.D. Capital, Inc. dba Lendistry as the designated third-party grant administrator of the Program ("Lendistry"), each may rely on the below certifications in determining the Applicant's eligibility for receipt of a grant under the Program.

By executing this document (the "Application Certification"), the Applicant hereby certifies to all of the following (please initial next to each of the certifications below):

- 1. The undersigned signatory: (a) is a duly authorized owner and representative of Applicant; (b) except to the extent Applicant is a cooperative business entity, holds at least 20% of the outstanding ownership interest in Applicant; and (c) has full authority to make the certifications referenced herein on Applicant's behalf.
- 2. Applicant represents, warrants, and agrees that it has the full authority to make the certifications referenced herein.
- 3. Applicant acknowledges and agrees that the State, ESD, and/or Lendistry each reserves the right to demand the return of all or any portion of the grant funds if any of the certifications made herein are determined to be false or not adhered to.
- 4. Applicant acknowledges and agrees that it will cooperate with and provide such information as is reasonably requested by the State, ESD, Lendistry, and/or either of their authorized designees, including, without limitation, for the purpose of conducting a Program compliance review. Such request may include, without limitation, documentation and other information regarding Applicant's business activities and/or financial information.
- 5. Applicant acknowledges that the State, ESD, Lendistry, and/or either of their authorized designees, may publicly release information regarding any ultimate grant award, including but not limited to, Applicant's name, address, business activities, owner(s) information, and grant award amount. Applicant hereby authorizes the State, ESD, Lendistry, and either of their authorized designees to make such public statements regarding Applicant for purposes of the foregoing. Applicant acknowledges that the State and ESD are subject to the New York Freedom of Information Law and any information within its custody and/or control may be subject to disclosure.
- 6. Applicant represents and warrants that Applicant meets all of the eligibility requirements for a grant award under the Program, including, but not limited to, that Applicant meets the definition of "Small Business," "Micro-business," and/or "For-profit Independent Arts and Cultural Organization." "Small Business" means a business which is resident in New York State, incorporated in New York State and licensed or registered to do business in New York State, is independently owned and operated, not dominant in its field, and employs one hundred or less

persons. "Micro-business" means a business which is resident in New York State, incorporated in New York State and licensed or registered to do business in New York State, is independently owned and operated, not dominant in its field, and employs ten or less persons. "For-profit independent arts and cultural organization" means a small or medium sized private for-profit, independently operated live-performance venue, promoter, production company, or performance-related business located in New York State negatively impacted by COVID-19 Health and Safety Protocols (defined below), and having one hundred or less full-time employees, excluding seasonal employees.

- ___ 7. Applicant is a currently viable Small Business, Micro-business, and/or For-profit Independent Arts and Cultural Organization, as determined by Applicant's net profit reported on Applicant's 2019 federal tax return, that began operations on or before March 1, 2019 and remains in operation as of the date Applicant submits its application (subject solely to Applicant being temporarily shuttered in compliance with Grantor's COVID-19 restrictions). Applicant acknowledges and agrees that if Applicant's business has ceased, or at any time within three (3) months after the date it receives any grant award funds under this Program ceases to operate permanently, Applicant may be required to return all or any portion of such grant award funds.
- ___ 8. Applicant has experienced, and can and will provide satisfactory evidence of, loss of gross receipts as a result of the COVID-19 pandemic, or compliance with COVID-19 Health and Safety Protocols, which resulted in Applicant's business modifications, interruptions, or closures. "COVID-19 Health and Safety Protocols" means any restrictions imposed on the operation of businesses by executive order 202 of 2020 issued by the Governor of the State, or any extension or subsequent executive order issued in response to the COVID-19 pandemic, or any other statute, rule, or regulation imposing restrictions on the operation of businesses in response to COVID-19.
- ___ 9. Applicant hereby represents and warrants to each and all of the following:
- (a) Applicant had 2019 or 2020 gross receipts of between \$25,000 and \$500,000 per annum, as reflected on Applicant's filed federal tax returns;
 - (b) Applicant's business generated a positive net profit in 2019, as reflected on Applicant's 2019 filed federal tax return;
 - (c) Applicant experienced at least a twenty-five percent (25%) loss in annual gross receipts in a year-to-year revenue comparison as of December 31, 2020 to the same period in 2019, in each case, as reflected on Applicant's 2019 and 2020 filed federal tax returns; and
 - (d) Applicant's 2020 total expenses, as reflected on Applicant's 2020 filed federal tax returns, exceed the aggregate amount of grant funds Applicant is eligible for under this Program.
- ___ 10. Applicant is in substantial compliance with applicable federal, state, and local laws, regulations, codes, and requirements.
- ___ 11. Applicant does not owe any federal, state, or local taxes that remain due for any periods prior to July 15, 2020, unless such outstanding balance is covered by an approved repayment plan, deferral plan, or other applicable agreement with the appropriate federal, state, or local taxing authority.

- ___ 12. Applicant has either (a) not qualified for any business grant assistance programs under the federal American Rescue Plan Act of 2021 or any other available federal COVID-19 economic recovery or business assistance grant programs, including loans forgiven under the federal Paycheck Protection Program, or (b) was unable to obtain sufficient business assistance from such federal programs; provided, however, that Applicant will not be disqualified from this Program if they have received or been awarded any of the following federal assistance:
- (a) United States Small Business Administration (“SBA”) Paycheck Protection Program loans totaling \$100,000 or less;
 - (b) COVID-19 Economic Injury Disaster Loan (“EIDL”) Advance Grant of \$10,000 or less;
 - (c) COVID-19 EIDL Supplemental Targeted Advance Grant of \$5,000 or less; or
 - (d) SBA Shuttered Venue Operators Grant.

Applicant acknowledges that Lendistry may verify such information based on the information and documentation provided by Applicant, including, without limitation Applicant’s bank statements and other financial documentation.

- ___ 13. Applicant’s business is currently operational and Applicant is not restricted by any state, local or other agency mandate.

- ___ 14. If awarded, grant funds will only be used to cover one or more of the following COVID-19-related expenses incurred by Applicant between March 1, 2020 and April 1, 2021:
- (a) payroll costs;
 - (b) commercial rent or mortgage payments for property located in the State, excluding any rent or mortgage prepayments;
 - (c) payment of local property or school taxes associated with a small business location within the State;
 - (d) insurance costs;
 - (e) utility costs, including heating, ventilation, and air conditioning;
 - (f) supplies and materials necessary for compliance with COVID-19 health and safety protocols, including the procurement of personal protection equipment necessary to protect the health and safety of workers and consumers;
 - (g) other machinery or equipment costs; or
 - (h) other documented costs related to COVID-19, as approved by ESD.

- ___ 15. If awarded, no portion of the grant funds will be used for any purposes other than those listed in Section 14 above. Specifically, no portion of any awarded grant funds will be used to repay or pay down any portion of a loan obtained through a federal COVID-19 relief package for business assistance or any State business assistance programs. Applicant acknowledges and agrees that if all or any portion of grant funds are used for any unauthorized purposes, the State may hold the undersigned, Applicant, and/or any other owner thereof legally liable, including, but not limited to, possible charges of fraud.

- ___ 16. Applicant acknowledges and agrees that Applicant is not one or more of the following businesses deemed ineligible to receive a grant under the Program:
- (a) a non-profit organization;
 - (b) a church or other religious institution;
 - (c) a government-owned entity or elected official office;
 - (d) a business primarily engaged in political or lobbying activities;

- (e) a business that received one or more awards pursuant to the SBA Restaurant Revitalization Grant Program;
- (f) a landlord or other passive real estate business;
- (g) a business or enterprise that is engaged in any activity that is illegal under federal, state or local law; and/or
- (h) any other industry or business type as specified by ESD.

- ___ 17. No owner of greater than 10% of the equity interest in Applicant: (a) has within the prior three (3) years been convicted of or had a civil judgment rendered against such owner, or has had commenced any form of parole or probation (including probation before judgment), for (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, (ii) violation of federal or state anti-trust or procurement statutes, or (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or (b) is presently indicted for or otherwise criminally or civilly charged by a government entity, (federal, state or local) with commission of any of the offenses enumerated in subparagraph (a) above.
- ___ 18. Applicant represents and warrants that any and all demographic information (to the extent Applicant has elected to provide such information), including, if applicable, information with respect to owners' socially and economically disadvantaged status, and any other information provided by Applicant in its application regarding the ownership of Applicant, is true and accurate.
- ___ 19. Applicant has not and will not apply for or receive any other grant through or under the Program. Applicant agrees that if more than one award is issued to Applicant, then one or all awards will be voidable at the discretion of the State, ESD, Lendistry, and/or their designees.
- ___ 20. Applicant acknowledges that Applicant's eligibility for the Program and any grant award will be determined based, in part, on the tax and other documents and information provided by Applicant, and that the State and ESD will rely on such determination and tax and other documents in making any grant award to Applicant. In furtherance of the foregoing, Applicant represents and warrants that all documentation, statements and information provided by Applicant on and in connection with Applicant's application under this Program are true, accurate and complete in all material respects and that neither Applicant nor any other authorized person on behalf of Applicant has made or will make any material misrepresentations in connection with Applicant's application for a grant award under this Program. Applicant further affirms that the tax return information it will provide in connection with the Program is identical to the tax return information submitted to the Internal Revenue Service. Applicant understands, acknowledges, and agrees that Lendistry, as the State and ESD's third-party designee to disburse funds under the Program, and the State and its authorized representatives, including without limitation, ESD, may share such tax and other information with local, state and federal authorized representatives, including without limitation for the purpose of compliance with federal, state, or local laws and regulations.
- ___ 21. Applicant acknowledges that the State, ESD, and Lendistry are relying on these certifications regarding the use of potential funds, business eligibility, owner information and financial information for both the Applicant and its owner(s). Applicant makes these certifications in good faith, taking into account the Applicant's business activity.

___ 22. Applicant certifies and agrees: (a) that all representations, warranties, certifications, and acknowledgements contained in this Application Certification are true and correct; and (b) that Applicant has complied and will comply with all of the requirements of this Program. In the event the State, ESD, and/or Lendistry demand the return of all or any portion of any grant funds received by Applicant, Applicant will be responsible for all costs and expenses incurred by the State, ESD, and/or Lendistry with respect to the collection of the return of such grant funds including, without limitation, attorneys' fees.

Signature

Date

Printed Name

Title

Applicant Business Name

EIN #/SSN #/ITIN #

Applicant Business Address