

Drawn Together: Bylaws and vision statements proposed to Artists Alliance, Inc.

To Jodi Waynberg and the Board of Artists Alliance, Inc.

The artists and curators of the *Drawn Together* project, being Anaïs Duplan, Mira Dayal, Maia Chao, Simon Wu, and Yxta Maya Murray, are honored to have been given the opportunity to engage Artists Alliance on the issue of fair and transparent contracts. We admire Artists Alliance and the care that it expresses for its artists, curators, workers, and the surrounding community.

In our engagement with Artist Alliance, we have had the privilege of listening to nineteen artists, curators, art workers, and activists (hence forward, “constituents”) to discuss the nature of contracts that they undertake with art institutions. Constituents taught us that artists and curators derive much meaning from their relationships with arts institutions. Their work with arts institutions can create for them identity, a sense of family, a sense of worth, and other essential psychological benefits and social frameworks. We also heard many constituents describe experiences of economic, social, psychological, and professional precarity. As our discussions with Jodi Waynberg of Artists Alliance have demonstrated, Artists Alliance understands that these two sets of experiences put the onus on arts institutions to enter into fair and transparent agreements with constituents. The constituents taught us how certain terms, if included in such contracts by way of institutional bylaws, would facilitate those goals.

Part of the remit of *Drawn Together* also required us to discuss institutions’ obligations and relationships to the surrounding social environment. That is, we are concerned about “social contracts,” or the agreements or obligations arts institutions undertake with lower-income, majority-minority, and gentrifying communities, in which they are often located. However, our conversations were mainly taken up with the issues of artist and curator contracts, and less with the locality. Whenever community issues did arise, they inspired lively discussion, but time limitations forbade an in-depth analysis of these matters. We understand that much more work must be done on the issue of arts institutional social contracts with communities, and we encourage further enterprise in this area. For the time being, this document reflects some of the insights that we received about these social contracts, but with the expectation that further dialogues and changes will need to be implemented in this domain.

Reflecting on the conversations held with constituents, and drawing on the primary concerns and inequities evidenced therein, what follows is a set of terms that Dayal, Wu, Chao, Duplan, and Murray advance to Artists Alliance. We offer these terms to be included in Artists Alliance’s bylaws, with the understanding that, if accepted, they will affect all future contracts with artists and curators who undertake professional engagements with Artists Alliance. We understand that the implementation of these terms will require an iterative and experimental process. We encourage Artists Alliance to treat this document as an open draft to be amended and revisited as reflection ensues over the next several months and years. No terms concerning the social environment are included in the below list. However, succeeding the list is a statement about obligations and commitments to the surrounding social environment, and this may be included in the bylaws as part of a “vision statement.”

Definitions

An artist, art worker, or curator with a temporary employment contract is a “contractee.”

An arts institution is a “contractor.”

“Engagement” means any activity that the contractee and contractor contract to undertake together. This may be a show or other project.

“In person” is either a live meeting or a meeting on a platform such as Zoom or Google Meet.

Contractual terms that Wu, Dayal, Chao, Duplan, and Murray propose that Artists Alliance include in its bylaws:

Most of the terms that follow are severable (that is, may be adopted or rejected independently). However, the artists of *Drawn Together* believe that terms **1, 2, 3, and 4** are the most essential and should be adopted together.

Furthermore, clauses **5, 6, and 7** are also interdependent.

We propose that Artists Alliance (the contractor), include the following terms, pertaining to all future contracts with contractees as defined above, in their bylaws:

Support systems for the contractee during an initial negotiation

1. Time for contract reading, interpretation, discussion, and negotiation will be allocated in the production and engagement schedule; the contractee will be informed of this time period and its purpose. This period for contract negotiation will allow a reasonable period of time for the two exchanges listed in #2 and, if adopted, for the mentoring and meeting provisions listed in #6 and #7 as well. During the *Drawn Together* team's meetings, we have considered periods ranging from 3 to 10 business days, and recommend such a span. The appropriate period for the initial negotiation may be determined by agreement between the contractor and contractee. This period will begin when the contractee receives the first draft of the contract.

2. During the contract-formation period described in #1, two exchanges will be scheduled between a leading member of the contractor and the contractee, undertaken for the purpose of settling the terms of their contract. These meetings must be scheduled such that the contractee is allowed at least one working day for consideration of the contract between the exchanges; the time period will depend on the overall time period agreed upon in #1.

a. In the first meeting, which will take place during an in-person, oral conversation (or another format if preferred by the contractee), the parties will discuss the terms of the first draft of the contract. During this meeting, the contractee will have an opportunity to request clarification, translation, and/or rewording of contractual language.¹

¹ This period of explanation, negotiation, and contemplation is inspired by extant protective legislation. Federal and New York consumer laws allow, in certain situations, for there to be a three day “cooling off period,” wherein a consumer may extract themselves from certain contractual obligations. See, e.g., 16 C.F.R. 429 (2008) (Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations); N.Y. Gen. Bus. Law 738 (2008). “Drawn Together’s” artists learned of the need for an oral sit-down from our conversations with artists, curators, and activists. There has been some recognition that oral recitations may improve contractual transparency and literacy, though it has been acknowledged that such a practice does not guarantee understanding. Thus we have

- b. The contractee will undertake a period of contemplation and fact-finding within the time period agreed upon in #1.
 - c. Before the end of the period agreed upon in #1, the contractor and the contractee will communicate to resolve any outstanding contractual issues. This exchange may take place “in person” at the discretion of both parties. During this exchange, the contractee will have another opportunity to request clarification and rewording of contractual language.
3. The contract will itemize all material obligations expected of the contractee during the course of the employment. “Material” means an obligation that would influence a reasonable person, in the contractee’s position, to enter or refuse to enter the employment contract. This may include, beyond the production or curation of art for the engagement, any and all engagement-related tasks expected of the contractee, such as meetings and calls, writing press materials and social media posts, negotiating contracts and payments or advocating for artists, additional labor incurred due to immigration status, and any additional commitments that the contractee will be expected to undertake.
 - a. For each task, an estimated number of hours to be spent on the task will be listed. If the actual hours spent on these tasks is more than 30% beyond the calculated hours, a renegotiation period as described in #10 can be initiated at the contractee’s discretion.
 4. The contract will be written in plain language.²

Transparency, education, and fact-finding

5. The contract will include an outline of how other contractees working in the same capacity as the contractee (during the same project) will be compensated.
6. The contractor will offer the contractee an opportunity for “contract mentoring,” to occur during the contract-development period described in #1 and #2. “Contract mentoring” involves the pairing of the contractee with another artist, art worker, or curator (either of the same contractor or another arts institution, so long as both the contractor and contractee agree that this person will be able to provide mentorship) with greater experience in entering into contracts with arts institutions. The mentor will tutor the contractee in the skills of negotiation and affirmation of self-worth. The mentor may be invited to the initial contract negotiation meetings outlined in #1 and #2.
7. During the contract-development period described in #1 and #2, the contractor will create at least one opportunity for a conversation about contracts between the contractee and other contractees of the arts institution working on the same engagement, in order that contractees are not “siloeed off” and deprived of information and fellowship critical to the development of fair and transparent contracts. The adoption of this term in addition to term #5 will be necessary in order to avoid the prisoner’s dilemma, whereby participants may feel deterred from sharing information about their own contracts during these conversations.

Support for negotiation and renegotiation

determined that a back-and-forth engagement is required. See, e.g. J.H. Verkerke, Legal Ignorance and Information-Forcing Rules, 56 Wm. & Mary L. Rev. 899, 907 (2015).

² This provision is inspired by N.Y. Gen. Oblig. Law § 5-702 (McKinney), which provides that plain language will be used in certain contracts. Section (a)(1) of this law requires that such contracts be “[w]ritten in a clear and coherent manner using words with common and every day meanings.”

<https://www.consumerfinancemonitor.com/2019/07/22/ny-legislature-passes-bills-to-extend-coverage-of-plain-language-law-and-prohibit-use-of-social-network-information-for-evaluating-creditworthiness/>.

8. The initial contract will be branded as a “draft” to affirm for the contractee that it is negotiable.
9. The contract will state that the contract’s purpose is one of mutual protection, not just of the protection of the contractor.
10. During the employment period, another period for contract negotiation will be scheduled, in order to address any disparities in time or compensation that were invisible at the time of the initial contract formation. This period would involve an in-person meeting and would preferably exist in the middle of the employment term. Other work on the engagement may proceed during this period but must not undermine the contractee’s ability to renegotiate or the contractor’s ability to fulfill its essential functions. The renegotiated terms may not decrease the compensation of the contractee for work previously completed but may address additional work previously completed that was not outlined on the original contract. Such additional work will be recorded during the feedback period detailed in #13 and compensated at the equivalent of the rate originally agreed upon (as per the outline of tasks and estimate of hours in #3a, and the original payment amount).
11. The contract will contain a contingency clause that would allow additional renegotiation (outside of the period outlined in #10) in the event of circumstances that create obstacles for the contractee’s fulfillment of their contractual obligations; these circumstances are understood to be related to the contractee’s experiences with structural racism, sexism, nativism, disablism, classism, queerphobia, and poverty, and/or discrimination or oppression or lack of life chances relating to the contractee’s religion, pregnancy and lactation status, national origin, immigration status, status as a victim of domestic violence, sexual violence, or stalking, gender, gender identity, sexuality, age, mental or physical disability, race, color, status as a veteran or active military service member, arrest or conviction record, caregiver status, credit history, pre-employment marijuana testing, unemployment status, sexual or reproductive health decisions, and salary history. Under this clause, the parties will restructure the schedule or other details of the engagement in order to provide reasonable accommodation for the contractee.³

Affirmation of value

12. The contract will reflect the value that the contractee brings to the engagement, and that the institution brings to the contractee, beyond the manufacture of art or performance for the engagement. This may include the contractee’s provision of cultural capital, attraction of resources to the institution, generational wisdom or savvy, or any other forms of capital that the contractee provides. This may also

³ The concept of reasonable accommodations is borrowed from the Americans With Disabilities Act and the New York State Human Rights Law. *See* 42 U.S.C. § 12112(b)(5)(A); N.Y. Exec. L. 296(3)(a). It is also inspired by the New York City Human Rights Law, *see* Title 8 of the Administrative Code of the City of New York. Under the ADA and NYSHRL, employers must “afford reasonable accommodation of an employee’s known disability unless the accommodation would impose an undue hardship on the employer.” *See Noll v. Int’l Bus. Machines Corp.*, 787 F.3d 89, 94-95 (2d Cir. 2015) (“Reasonable accommodation may take many forms, but it must be effective. . . . A reasonable accommodation is one that ‘enable[s] an individual with a disability who is qualified to perform the essential functions of that position . . . [or] to enjoy equal benefits and privileges of employment.’ At the same time, employers are not required to provide a perfect accommodation or the very accommodation most strongly preferred by the employee.”). While the contractor may be beholden to nondiscrimination mandates imposed by these laws as well as the duties imposed by other civil and human rights statutes, we intend that the contractor bind itself to accommodation duties beyond those encoded in existing legal protections. Thus, the list of experiences and forms of discrimination included in this section is informed by the protections afforded by the New York City Human Rights Law, *see id.*, but the rights of accommodation are more expansive than those allowed under that statute.

include the contractor's [types of values that institution brings listed here]. These forms of value are to be named, discussed, and acknowledged orally during the initial sit-down meeting in which the contract is discussed (as described in #1), such that the contractor and contractee are also provided an opportunity to orally name additional forms of value they will bring to the engagement. These values will be added in writing into the contract. This itemization of the value brought by the contractee to the engagement may not be used to later decrease payment terms.

Feedback and self-analysis

13. After the engagement, a period will be set aside for the contractee's delivery of feedback and the contractor's absorption of it. This feedback will relate to the success or lack thereof of the contract and its fulfillment. The feedback will also ideally include a calculation of time spent on the project to assist the institution in calculating fair compensation and schedules for future projects. The feedback may be undertaken either in person or in the form of written material. The contractee may choose which of these forms the feedback will take.

14. An end-of-the-year institutional self-analysis will be scheduled regarding the metrics of contractee diversity and transparency and fairness of contracts. The contractor's self-analysis will consider, in particular, the ways in which the new bylaws have affected these metrics. The self-analysis will be published on the institution's website.

15. With the agreement of the contractee, all contracts, payment amounts, and feedback data related to contracts undertaken by the contractor and contractee will be made transparent, and thus available on the institution's website, without naming the contractee.

Statement about the surrounding social environment for the bylaws' "vision statement":

Artists Alliance understands itself to be a force, and/or a potential force, of gentrification, exclusion, and eviction within Essex Market and the Lower East Side, being the communities in which it is situated. We undertake a commitment to further study, through outreach and research, the negative social and economic effects that we may be imposing upon the surrounding environment. We commit to prioritizing the cultivation, conservation, support, and maintenance of the culture and socioeconomic health of our neighbors, and will further add to our bylaws to this effect within the space of two years from the adoption of these bylaws on [X date].

Artists Alliance is also dedicated to the ethics of self-analysis, as indicated in the Feedback section. The creation of an external standing advisory committee including diverse members of the community seems necessary in that regard. However, how that committee will be composed and how they will be compensated will require further study. The standing advisory committee would be charged with executing a yearly audit to study the metrics of contractee diversity and the transparency and fairness of contracts. The audit would consider, in particular, the ways in which the new bylaws have affected these metrics. The audit would be published on the institution's website. The mechanics of this committee's work shall be determined via a future process and shall be devised within one year from the adoption of these bylaws on [X date].

Sincerely, and with gratitude for participating with us in this process,
The Drawn Together Team