

## **SUBSCRIPTION AGREEMENT FOR MEMBERSHIP UNITS IN SAME SAME BUT DIFFERENT LLC**

This Subscription Agreement (the "Agreement") is made and entered into as of [EFFECTIVE DATE] by and among Same Same But Different LLC, a California limited liability company (the "Company"), and the undersigned subscriber (the "Subscriber").

### **BACKGROUND**

The Company is offering membership units in the Company (the "Units") pursuant to Regulation Crowdfunding under Section 4(a)(6) of the Securities Act of 1933, as amended (the "Securities Act"). The Units will be issued to an SPV (the "SPV") managed for the benefit of WeFunder investors. The SPV will hold non-voting membership units in the Company and Subscribers will hold non-voting membership units in the SPV.

The Company has authorized the issuance of up to 10,000 Units under this offering at two valuation tiers:

- \$100 per Unit for the first \$60,000 of investment (implying an \$8,000,000 pre-money valuation)
- \$125 per Unit thereafter (implying a \$10,000,000 pre-money valuation)

The minimum target for this offering is \$50,000. The maximum is \$1,235,000.

The Units are non-voting, carry no distribution preferences, and the enforceability of such non-voting status is intended to be consistent with California LLC law. Investors are advised to consult legal counsel if they seek clarification on member's rights. There are no guarantees of dividends or liquidity.

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### **1. Subscription**

Subject to the terms of this Agreement, the undersigned Subscriber hereby subscribes to purchase Units in an amount determined by dividing the Subscriber's investment amount by the applicable Unit price as described above.

This subscription is made pursuant to the Form C and offering details provided on the WeFunder portal (the "Portal"). All Company operations will be subject to Company Operating agreement (see Addendum A and B)

## **2. Acceptance of Subscription**

The Company may accept or reject this subscription, in whole or in part, for any reason. Acceptance shall be effective only upon countersignature by the Company and delivery of a confirmation to the Subscriber.

## **3. Closing**

The closing of the offering will occur after the minimum target amount is reached and subject to the conditions described in the Portal's offering terms. Funds will be transferred to the Company from escrow upon closing.

## **4. Nature of Investment**

The Subscriber understands and agrees that:

- The Units are non-voting;
- The Units do not entitle the holder to any distributions or liquidation preferences;
- The Company may issue additional Units in accordance with the terms of its operating agreement;
- The Company is under no obligation to repurchase or redeem the Units except as provided in this Agreement.

## **5. Use of Proceeds**

The proceeds of this offering may be used for general business working capital, expansion initiatives, or repayment of Company debt. Example allocations may include:

- SSBD Festival Expansion 22.5% – Upgrade production value, talent, art, and activations.
- Debt Restructuring 26.7% – Eliminate high-interest short-term loans to improve cash flow.
- Cash Reserve 18.3% – Ensure financial stability and flexibility during growth.

- Marketing & Advertising 10% – Run year-round digital campaigns, hire agency support, and scale brand awareness.
- New Event Launches 6.6% – Develop and produce larger “Same Same Presents” shows across additional cities.
- Staffing & Ops Expansion 6.7% – Add full-time roles in sales, marketing, and partnerships.
- Tech & Infrastructure 1.7% – Upgrade CRM systems, ticketing integrations, and merch/retail tools.
- 7.5% - Wefunder fee

The above are illustrative and may be adjusted at the discretion of management.

## 6. Risk Factors

Investment in the Company involves significant risks, including both general business and festival-industry-specific challenges, including but not limited to:

- We Are a Seasonal, Event-Based Business: Revenue is centered on one major annual event. Weather, cancellations, or other disruptions could materially affect performance.
- Operational Risks and Cost Overruns: Production and staffing costs may exceed expectations, reducing profitability.
- Competition in the Festival Market: Larger, better-resourced festivals may compete for artists, attendees, and sponsors.
- We Have Just Become Sustainable: There is no guarantee of ongoing or future profitability.
- Investor Returns Are Not Guaranteed: Investors may not recover their capital or receive any return.
- Economic or Regulatory Changes: Inflation, recession, or new regulations (e.g., alcohol, insurance, public event restrictions) could negatively affect business.
- Revenue Depends on Ticket Sales and Sponsorships: Drops in demand or failure to secure sponsors could impair operations and returns.
- Illiquidity: No public market exists for Units and resale is highly restricted.
- Potential Dilution: The Company may issue additional Units in the future, which could dilute the ownership and economic interests of existing Unit holders. Such issuance may

occur without further approval under the amended operating agreement.

- **Transfer Restrictions:** Units are subject to restrictions on transfer and resale. They may not be transferred without the prior written consent of the Manager and compliance with applicable securities laws.
- **Forward-Looking Statements:** Any financial projections or forward-looking statements are based on assumptions that may not occur. Actual results may differ materially, and no assurance can be made regarding future performance.
- **Limitation of Liability and Indemnification:** To the fullest extent permitted by law, the Manager and the Company shall not be liable for any loss incurred by investors except in cases of willful misconduct or fraud. Subscribers agree to indemnify the Company for losses resulting from breaches of this Agreement or violations of applicable law.

## **7. Buyout Rights**

The Company reserves the right, but not the obligation, to repurchase Units from the SPV or individual investors in the future at fair market value. Any such repurchase shall:

- Be offered on terms no less favorable than to other similarly situated investors;
- Be based on a good faith determination of fair market value, which may include a third-party valuation or internal financial metrics;
- Require written notice to the Unit holder(s) with 60 days to respond;
- Comply with all applicable securities laws and operating agreement provisions.

This clause does not create an obligation for the Company to repurchase Units but allows optional redemption flexibility.

## **8. Representations by Subscriber**

The Subscriber represents that:

- They have reviewed the Form C and related offering documents;
- They are capable of evaluating the risks of the investment;

- They are acquiring the Units for investment only, not resale;
- They understand and accept the illiquid, high-risk nature of the investment.

## **9. Governing Law**

This Agreement shall be governed by the laws of the State of California.

## **10. Arbitration**

Any disputes arising from this Agreement shall be resolved through arbitration in San Diego County, California, under the rules of JAMS.

## **11. Notices**

Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be deemed duly given and effective (i) when delivered personally; (ii) when sent by email; or (iii) when mailed by certified mail, return receipt requested, postage prepaid, to the address or email address provided by each party on record with the Company or as updated in writing by the party.

## **12. Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein and supersedes all prior discussions or understandings.

## **13. Electronic Execution**

This Agreement may be executed electronically and in counterparts.

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IN WITNESS WHEREOF, the parties have executed this agreement as of [EFFECTIVE DATE].

Number of Units: [UNITS]

Aggregate Purchase Price: \$(AMOUNT)

**COMPANY:**

**Same Same But Different LLC**

*Founder Signature*

Name: [FOUNDER\_NAME]

Title: [FOUNDER\_TITLE]

**Read and Approved (For IRA Use Only):**

**SUBSCRIBER:**

[ENTITY NAME]

By: \_\_\_\_\_

*Investor Signature*

By: \_\_\_\_\_

Name: [INVESTOR\_NAME]

Title: [INVESTOR\_TITLE]

The Subscriber is an “accredited investor” as that term is defined in Regulation D promulgated by the Securities and Exchange Commission under the Securities Act.

Please indicate Yes or No by checking the appropriate box:

☐ Accredited

☒ Not Accredited

Addendum A

**OPERATING AGREEMENT OF SAME SAME BUT DIFFERENT LLC**

This Operating Agreement (the "Agreement") is made and entered into on March 2, 2023 by and among the following members (the "Members") of Same Same But Different LLC (the "Company"), a California Limited Liability Company:

| Member Name             | Ownership Percentage | Profit Share | Loss Share |
|-------------------------|----------------------|--------------|------------|
| Bradley Sweet           | 24.75%               | 24.75%       | 18.44%     |
| Michael Ault            | 21.47%               | 21.47%       | 26.83%     |
| Valaski Motorsports LLC | 1.67%                | 1.67%        | 2.08%      |
| Elliott Sencan          | 1.49%                | 1.49%        | 1.86%      |
| Golfwire LLC            | 17.97%               | 17.97%       | 22.46%     |
| JCC Investments         | 4.23%                | 4.23%        | 5.28%      |
| Guerric Sloan           | 1.84%                | 1.84%        | 2.30%      |

|   |        |        |       |
|---|--------|--------|-------|
| Brandon Copp  | 0.92%  | 0.92%  | 1.15% |
| Hannah Choi   | 1.06%  | 1.06%  | 1.32% |
| NBS Capital   | 6.19%  | 6.19%  | 7.74% |
| Tyler Enterprises, Inc. Restated<br>Profit Sharing Plan, Helen A.<br>Tyler, Trustee | 7.00%  | 7.00%  | 8.75% |
| Colby Jacobson  | 1.42%  | 1.42%  | 1.77% |
| Peter Eichar  | 10.00% | 10.00% | 0%    |

WHEREAS, the Members desire to set forth their agreement with respect to the management, operation, and governance of the Company.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Members agree as follows:

#### **ARTICLE I. FORMATION OF THE COMPANY**

1.1 Formation. The Company was formed on January 1, 2018 as a California Limited Liability Company. The Members have executed and filed Articles of Organization with the Secretary of State of California.

1.2 Name. The name of the Company is Same Same But Different LLC.

1.3 Principal Place of Business. The principal place of business of the Company is located in San Diego, California.

## **ARTICLE II. BUSINESS PURPOSE**

2.1 Business Purpose. The purpose of the Company is to engage in the business of organizing and producing music festivals and related events.

## **ARTICLE III. MANAGEMENT**

3.1 Manager. The Company shall be managed by Bradley Sweet (the "Manager"). The Manager shall have the power and authority to manage the day-to-day affairs of the Company and to make all decisions regarding the management and operation of the Company, except as otherwise provided in this Agreement.

3.2 Powers of the Manager. Without limiting the generality of Section 3.1, the Manager shall have the power and authority to:

- (a) Execute and deliver all contracts, agreements, and other instruments on behalf of the Company;
- (b) Borrow money, raise money from new members, incur indebtedness, and issue promissory notes, bonds, or other obligations of the Company;
- (c) Invest the funds of the Company in any property, real or personal, tangible or intangible, and to sell or otherwise dispose of such property;
- (d) Hire employees and independent contractors to perform services for the Company;
- (e) Establish, modify, and terminate any compensation and benefits plans for the employees and independent contractors of the Company;
- (f) Prepare and present to the Members annual financial statements and other reports regarding the operations of the Company;
- (h) Take any other actions reasonably necessary or desirable to carry out the purposes and objectives of the Company.

3.3 Restrictions on Manager's Authority. Notwithstanding any other provision of this Agreement, the Manager shall not have the power or authority to take any of the following actions without the prior written consent of the Members:

- (a) Raising additional capital at an evaluation that is less than \$5,000,000;
- (b) Raising enough money to cause a dilution of over 33%, such as a partial sale of the Company;

(c) Sale of the Company.

3.4 Removal of Manager. The Manager may be removed with or without cause by the Members at any time by a vote of a supermajority, or 66% of the Members.

3.5 Resignation of Manager. The Manager may resign at any time by providing a written notice of their resignation to the Members at least 30 days prior to their intended last day.

3.6 Vacancy. If the position of Manager becomes vacant for any reason, the Members shall select a new Manager by a vote of a simple majority of the Members. The previous Manager shall remain in place until a new Manager is elected.

3.7 Personal Debt. In the event the Manager incurs personal debt for legitimate SSBD business expenses, such debt will be assumed by SSBD if the company dissolves, or the Manager departs or is removed from the role. This debt will be divided among the remaining partners in proportion to their ownership interests at the time of dissolution or change in management. The Manager will not be held responsible for debts incurred for the benefit of SSBD.

#### **ARTICLE IV. CAPITAL CONTRIBUTIONS**

4.1 Initial Capital Contributions. The Members have made the following initial capital contributions to the Company:

|                         | 2018      | 2019     | 2020 | 2021 | 2022 | 2023 | TOTAL |
|-------------------------|-----------|----------|------|------|------|------|-------|
| Bradley Sweet           | \$120,000 |          |      |      |      |      |       |
| Michael Ault            | \$50,000  |          |      |      |      |      |       |
| Valaski Motorsports LLC | \$10,000  |          |      |      |      |      |       |
| Elliott Sencan          | \$10,000  |          |      |      |      |      |       |
| Golfwire, LLC           | \$10,000  |          |      |      |      |      |       |
| Michael Ault            |           | \$20,000 |      |      |      |      |       |
| JCC Investments LLC     |           | \$20,000 |      |      |      |      |       |
| Golfwire,               |           | \$10,000 |      |      |      |      |       |

|                         |  |          |          |          |           |  |  |
|-------------------------|--|----------|----------|----------|-----------|--|--|
| LLC                     |  |          |          |          |           |  |  |
| Bradley Sweet           |  | \$10,000 |          |          |           |  |  |
| Guerric Sloan           |  | \$10,000 |          |          |           |  |  |
| Hannah Choi             |  | \$10,000 |          |          |           |  |  |
| Brandon Copp            |  | \$10,000 |          |          |           |  |  |
| Michael Ault            |  | \$20,000 |          |          |           |  |  |
| Bradley Sweet           |  | \$5,000  |          |          |           |  |  |
| Valaski Motorsports LLC |  | \$5,000  |          |          |           |  |  |
| Michael Ault            |  | \$50,000 |          |          |           |  |  |
| Golfwire, LLC           |  | \$15,000 |          |          |           |  |  |
| Michael Ault            |  |          | \$55,000 |          |           |  |  |
| Golfwire, LLC           |  |          | \$85,000 |          |           |  |  |
| Bradley Sweet           |  |          |          | \$25,000 |           |  |  |
| Michael Ault            |  |          |          | \$50,000 |           |  |  |
| Guerric Sloan           |  |          |          | \$10,000 |           |  |  |
| JCC Investments LLC     |  |          |          | \$20,000 |           |  |  |
| Michael Ault            |  |          |          |          | \$123,096 |  |  |
| Valaski Motorsports LLC |  |          |          |          | \$10,000  |  |  |
| Elliott Sencan          |  |          |          |          | \$20,000  |  |  |
| Hannah Choi             |  |          |          |          | \$4,762   |  |  |

|                     |                  |                  |                  |                  |                     |                     |                    |
|---------------------|------------------|------------------|------------------|------------------|---------------------|---------------------|--------------------|
| Golfwire, LLC       |                  |                  |                  |                  | \$80,952            |                     |                    |
| NBS Capital         |                  |                  |                  |                  | \$41,144            |                     |                    |
| JCC Investments LLC |                  |                  |                  |                  | \$19,048            |                     |                    |
| Colby Jacobson      |                  |                  |                  |                  | \$50,000            |                     |                    |
| Tyler Enterprises   |                  |                  |                  |                  |                     | \$350,000           |                    |
| Golfwire LLC        |                  |                  |                  |                  |                     | \$250,000           |                    |
| <b>Total Fund</b>   | <b>\$200,000</b> | <b>\$185,000</b> | <b>\$140,000</b> | <b>\$105,000</b> | <b>\$349,001.98</b> | <b>\$600,000.00</b> | <b>\$1,579,002</b> |

4.2 Additional Capital Contributions. The Members may be required to make additional capital contributions to the Company as determined by the Manager in its sole discretion. If a Member fails to make a required capital contribution, the Manager may, at its option, reduce the Member's ownership interest in the Company in proportion to the amount of the capital contribution not made.

4.3 Return of Capital. No Member shall have the right to withdraw or receive any return of its capital contributions except as provided in this Agreement.

## **ARTICLE V. ALLOCATIONS**

5.1 Allocations of Profits and Losses. The profits and losses of the Company shall be allocated among the Members in accordance with their ownership percentages as set forth in the grid in Article I.

5.2 Tax Allocations. All items of income, gain, loss, deduction, and credit of the Company for federal and state income tax purposes shall be allocated among the Members in accordance with their ownership percentages as set forth in the grid in Article I.

## **ARTICLE VI. DISTRIBUTIONS**

6.1 Distributions. The Company shall make distributions to the Members in proportion to their ownership percentages as set forth in the grid in Article I.

6.2 Restrictions on Distributions. The Manager may, in its sole discretion, withhold or delay distributions to the Members if, in its reasonable judgment, such distributions would be detrimental to the financial health of the Company.

## **ARTICLE VII. DISSOLUTION AND TERMINATION**

7.1 Dissolution. The Company shall be dissolved upon the occurrence of any of the following events:

- (a) The decision of the Members to dissolve the Company by a vote of a super majority (66%) of the Members;
- (b) The entry of a decree of judicial dissolution by a court of competent jurisdiction;
- (c) The expiration of the term of the Company, if any.

7.2 Winding Up. Upon the dissolution of the Company, the Manager shall wind up the affairs of the Company, pay or make reasonable provision for the payment of all liabilities of the Company, and distribute the remaining assets of the Company to the Members in proportion to their ownership percentages as set forth in the grid in Article I.

## **ARTICLE VIII. MISCELLANEOUS**

8.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.2 Entire Agreement. This Agreement constitutes the entire agreement of the Members with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written.

8.3 Amendments. This Agreement may be amended or modified only by the written agreement of all the Members.

8.4 Notices. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, sent by registered or certified mail (return receipt requested), or sent by email or other electronic means of communication to the addresses of the Members set forth in the grid in Article I or to such other address or email address as any Member may designate by written notice to the other Members.

8.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, executors, administrators, successors, and assigns.

8.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

8.7 Titles and Headings. The titles and headings of the sections and paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement.

## **AMENDMENT TO THE OPERATING AGREEMENT OF SAME SAME BUT DIFFERENT LLC**

This Amendment (the “Amendment”) to the Operating Agreement (the “Agreement”) of Same Same But Different LLC, a California Limited Liability Company (the “Company”), is made effective as of January 4, 2024.

WHEREAS, the Company is currently governed by an Operating Agreement dated March 2, 2023; and

WHEREAS, the Members of the Company have agreed to amend the Agreement to transition from a percentage ownership model to a membership unit system;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Members agree to amend the Agreement as follows:

### **1. Transition to Membership Units**

1.1 The ownership structure of the Company is hereby amended from a percentage-based ownership to an ownership unit-based system. Existing Members’ ownership percentages shall be converted into Units, with the allocation based on their respective percentage ownership in the Original Agreement.

1.2 The Company shall issue a total of 60,000 membership units. These Units shall represent equal proportional interests in the Company.

1.3 Voting Rights, Profit and Loss Distribution: All voting rights, profit and loss distribution, and capital contributions shall henceforth be based on the number of membership units held by each Member, in accordance with the allocation set forth above.

1.4 The membership units specifically allocated to Management - Peter Eichar and Brad Sweet shall still not participate in the loss distributions of the Company as outlined in the operating agreement.

1.5 Modification of Agreement: All references in the Agreement to percentage ownership shall be replaced with references to membership units. Any terms conflicting with this Amendment are hereby amended to align with the terms of this Amendment.

## **2 Manager's Authority to Add New Investors**

2.1 The Manager is hereby granted the authority to add new investors to the Company by issuing new Units, provided that the Company valuation at the time of such issuance is above \$5,000,000, in accordance with Section 3.3(a) of the Original Agreement. Furthermore, the issuance of new Units under this authority shall not result in a dilution of existing Members' ownership interests by more than 33%, as stipulated in Section 3.3(b) of the Original Agreement. This authority includes the discretion to determine the number and terms of the Units issued to new investors. The exercise of this authority by the Manager to add new investors and issue new Units shall be deemed an operational decision and not an amendment to this Operating Agreement. Therefore, it can be done without requiring the unanimous consent or signatures of all existing Members. This provision is intended to facilitate the efficient operation and growth of the Company while adhering to the overarching terms of the Operating Agreement and applicable laws.

## **3. Continuation of Other Terms**

Except as expressly amended by this Amendment, all terms and conditions of the Original Agreement shall remain in full force and effect.

## **4. Governing Law**

This Amendment shall be governed by and construed in accordance with the laws of the State of California.