



AICP MODEL PORTAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

Non-Disclosure and Confidentiality Agreement (“Agreement”) made and entered into as of the **Effective Date** stated below, by and between the undersigned commercial production information and data management and bid delivery service business (herein the “**Portal**”) and the undersigned commercial production company (herein the “**Vendor.**”) The Portal and the Vendor are each a “**Party**” and collectively are the “**Parties.**”

The following Recitals are incorporated into and made part of this Agreement:

- A. Whereas, the Portal provides certain services, which are represented to Vendor to be limited to collection, transmission, delivery, custodial retention and storage of commercial bidding and production related information, as an agent of, and vendor to, the advertiser (identified below herein “**Advertiser**”) who has engaged the advertising agency identified below (herein “**Agency**”) which services are performed through the Portal’s software and other processes (herein “**Portal Services**”); and
- B. Whereas, Portal Services conducted in the bidding phase prior to award of the commercial, are intended solely for the purpose of the mutual evaluation of a potential business relationship between the Vendor and the Advertiser involving the production of certain commercial advertising services, elements and materials and potentially for post-production services, elements and materials (herein the “**Production**”); and
- C. Whereas, in performing Portal Services, the Portal will receive Confidential Information as defined herein from the Vendor.

Now, therefore, in consideration of the disclosure by Vendor through the Portal of its Confidential Information, as herein defined, thus helping the Portal to perform Portal Services, the mutual promises herein contained and for other good and valuable consideration which the Portal acknowledges having received, the Portal (for itself, its employees, affiliates, agents, consultants and contractors) and the Vendor agree as follows:

1. Confidential Information means, without limitation, the Vendor’s proprietary, non-publically available, commercially valuable or potentially commercially valuable material, data, business plans, knowledge, bids, licenses, budgets, artists and craft person lists, pricing information, intellectual property, sources and resources, creative approaches or treatments, pitches, methods, object and source codes for software tools; whether any of the foregoing are legally deemed trade secrets, whether legally protected or protectable, in any form and whether tangible or intangible, oral or written, whether owned by the Vendor prior to the Production or created during the Production, whether as derivative tools based on or arising out of pre-existing intellectual property, patent, trademark or copyrights. Confidential Information (i) is acknowledged by the Portal to be the exclusive property of the Vendor (ii) may include third party information (excluding information provided by the Advertiser or Agency) that Vendor is bound in writing to keep confidential provided the Portal is so informed by the Vendor; and (iii) will be returned or destroyed as directed by the Vendor at the conclusion of the Vendor’s bidding for, or its services in connection with, the Production unless retention is authorized under the terms of the definitive production contract (see paragraph 4, *infra*).
2. The Vendor’s Confidential Information does not include (i) information that is or becomes generally available to the public without a breach of any obligation of confidentiality by Portal or any third party (ii) storyboards, scripts, photographs, product samples, and other proprietary materials created or independently developed by the Advertiser/Agency and disclosed to the



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Vendor (iii) information required to be produced pursuant to judicial subpoena process upon reasonable prior notice to the Vendor.

- 3. (i) Portal shall maintain Confidential Information in strictest confidence with the same degree of care that it applies to its own trade secrets, proprietary and confidential information but not less than a reasonable degree of care. (ii) Portal shall have no actual or implied ownership, right to use or other rights (by license or otherwise) in the Confidential Information or in any patent, trademark or copyright. (iii) Portal shall not disclose or transmit Confidential Information, without the prior written permission of the Vendor, except (x) Portal may disclose Confidential Information to the Advertiser, Advertiser’s cost consultant and Agency solely for their use as part of pre-award bidding and evaluation but, in such case, only to employees, agents and professional consultants of the Advertiser, Advertiser’s cost consultant or Agency who have an essential need to know for material reasons directly related to evaluating the potential Production and who are bound by written confidentiality covenants to the same degree as the Portal hereunder: Provided, however, that no disclosure of Confidential Information may be made by Portal, Advertiser, Advertiser’s cost consultant or Agency to any Advertiser or Agency in-house production unit and Portal shall promptly report to the Vendor in writing the participation of any Advertiser or Agency in-house production unit in the bidding process of which Portal shall become aware and: Further provided, that Portal shall not disclose Confidential Information or use Confidential Information for purposes of any multivendor data base (whether anonymous, aggregated or otherwise), benchmarking or research tool for itself, any customer or client of the Portal, advertiser, advertising agency or cost consultant, except solely for the use of the Advertiser, without the prior written permission of the Vendor.
4. If the Production is awarded to the Vendor, the Parties acknowledge that the Advertiser/Agency and Vendor may execute a definitive a production contract for the Production containing terms and conditions that govern confidential and proprietary information, ownership or other rights with respect to Vendor services, elements and materials related to the Production and that such provisions implicate Confidential Information. As between the Portal and the Vendor, nothing contained in any production contract shall create any rights in the Portal or reduce the Portal’s obligations herein to the Vendor with respect to Confidential Information.
5. This Agreement supersedes any contrary Portal policies, provisions, conditions or terms.

Wherefore, the Parties have executed this Agreement by their authorized representatives to be effective as of _____ 2018 (the “Effective Date”).

A) _____
Name of Portal

B) _____
Name of Vendor

By: _____
Title:

By: _____
Title:

C) _____
Name of Advertiser: _____

D) _____
Name of Advertising Agency: _____

Portal Services in addition to Recital A: _____