

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT  
FOR STATE PRODUCTION INCENTIVE APPLICATIONS**

Confidentiality and Non-Disclosure Agreement for State Production Incentive Applications (“Agreement”) made and entered into by and between the undersigned Advertiser and the undersigned commercial Production Company ( collectively the “Parties”) effective the \_\_\_\_ day of \_\_\_\_\_ 2013.

In consideration of the promises contained in this Agreement the Parties agree as follows:

**1. General.**

a. This Agreement is entered into by the Advertiser in consideration of the Production Company providing Producer Information ( as defined in paragraph 3) which it is not obligated to provide, or provide in the particular format requested, to the Advertiser, or to its independent, state production incentive application preparer (“Third Party Preparer”), as applicable, for the limited purpose of preparing and filing the Advertiser’s application for state production incentives that relate to commercial production(s) produced by the Production Company for the Advertiser identified following the signature page below (Commercials”); and is entered into by the Advertiser for other good and valuable consideration the receipt, adequacy and sufficiency of which is acknowledged by the Advertiser.

b. This Agreement supplements and does not cancel any other confidentiality or non-disclosure agreement or covenant between the Parties with respect to the subject matter of this Agreement including applicable provisions in the production agreement for the Commercial(s). This Agreement does not create any obligation in the Production Company to provide Producer Information (as defined in Paragraph 3) and any such obligation shall be determined under the terms of the production agreement for the Commercial(s) or under a separate written agreement.

**2. Production Incentive Application Process.**

a. The Advertiser has independently determined that it may be eligible for a state production incentive with respect to the Commercial(s).

b. The Advertiser may complete and file its application itself or may engage a Third Party Preparer, to prepare and file its application. In either case, the costs, fees and expenses associated with the preparation, filing and processing of the application shall be borne exclusively by the Advertiser and it shall be responsible for all acts and omissions of its Third Party Preparer. A Third Party Preparer shall not in the application process before any state production incentive agency represent itself as the Advertiser, a production company or a party having any interest or participation in the production of the Commercial(s) and the Advertiser shall not engage as a Third Party Preparer any person or entity that had any interest in, or representation of the Advertiser, in the production of the Commercials.

c. The Production Company and the Advertiser shall provide by a separate agreement, which may also be the production agreement for the Commercials, for the administrative fee to be paid to the Production Company for its services in connection with compilation and transmission of Production Information and the filing of the application by the Advertiser, its Third Party Preparer, as applicable, or by the Production Company, where it has also been engaged for filing services. The negotiated portion of the

Production Company's share of the production incentive proceeds shall be reflected in such separate agreement.

3. **“Producer Information.”**

a. As part of the application preparation and filing process, and solely for purposes of reporting qualifying production components and expenditures in the application, as those terms are used under applicable state production incentive laws and regulations, the Advertiser may request that the Production Company provide it, and/or its Third Party Preparer, as applicable, with information which is unique, confidential and proprietary to Production Company, relating to the Production Company and the production of the Commercial(s) (each item and all such information is referred to as “Producer Information”).

b. Producer Information contains valuable trade secrets and know-how owned by the Production Company and information covered by laws which protect employee personal, wage and social security account information and other individual rights and interests.

c. Producer Information may take any form and may be transmitted by any media including but not limited to written, electronic or oral communications. When incorporated in the application Producer Information shall remain confidential and proprietary to the Production Company and subject to the obligations, protections and restrictions in this Agreement.

4. **Exclusions From Producer Information.** Producer Information does not include information that is publicly available, has been developed by the Advertiser independently or was provided to the Production Company by the Advertiser for the production of the Commercial(s).

5. **Non-Disclosure, Restricted Use and Protection of Producer Information.**

a. The Advertiser (for itself and for its Third Party Preparer, as applicable) agrees that Producer Information shall be maintained, protected and secured in strictest confidence and shall be used only for and only to the extent any item of Producer Information is required under applicable state law in the preparation, filing and processing of the application with the appropriate state production incentive agencies. Producer Information shall not be distorted or altered in the application preparation process and shall not be disclosed, directly or indirectly, without the Production Company's prior written authorization except (i) when included in the application; (ii) within the Advertiser's organization (and within its Third Party Preparer's organization, as applicable), Producer Information may be shared with employees and with independent professional legal or tax advisors who have an essential need to know Producer Information in order to prepare, file and process the application, (iii) when it must be produced pursuant to court order or valid subpoena, after notice and opportunity to object has been given to the Production Company.

b. The Advertiser and its Third Party Preparer, as applicable, shall (i) maintain reasonable document, confidential information and trade secret protection measures sufficient to safeguard Producer Information ; (ii) shall obtain confidentiality undertakings substantially similar to those contained in this Agreement from its employees and independent professional legal or tax advisors who may have access to Producer Information, (iii) shall adopt and enforce confidentiality and non-disclosure business policies and (iv) shall return all Producer Information they have received and in all forms and copies in which it may be

held by the Advertiser and its Third Party Preparer, as applicable, promptly upon filing the application with the state production incentive agency or otherwise upon the written request of the Production Company.

c. The Advertiser shall require each Third Party Preparer to execute this Agreement. Each Third Party Preparer agrees (i) to be bound by this Agreement, (ii) that it shall not use Producer Information in any form, including but not limited to reports or analyses containing redacted or aggregated Producer Information, for the benefit of any client of the Third Party Preparer other than the Advertiser or for the Advertiser, where the Advertiser would not have been entitled to such information under the terms of the production agreement for the Commercial(s), (iii) that it shall not disclose Producer Information directly or indirectly to the Advertiser if such information would not have been provided to the Advertiser by the Production Company under the terms of the production agreement for the Commercial(s) and (iv) that it shall not assign or subcontract the application preparation to any other preparer. A copy of the Third Party Preparer's execution of this Agreement is a condition of providing Production Information to the Third Party Preparer.

d. The Advertiser (and its Third Party Preparer, as applicable) shall (i) use best efforts to encrypt all employee personal, wage and social security account information in the filed application; (ii) apply all confidentiality procedures available under state production incentive application rules in order to protect Producer Information contained in the application; and (iii) request that the agency with whom the application is filed maintain the utmost confidentiality permitted under its rules.

e. In further consideration of the disclosure of Producer Information to the Advertiser (and its Third Party Preparer, as applicable), the Advertiser represents that it has or shall obtain and will maintain at its own cost and expense, errors and omissions or other liability insurance, for the benefit of the Production Company as an additional insured, against third party claims arising out of or relating to the disclosure to or by the Advertiser (and its Third Party Preparer, as applicable), of employee personal, wage or social security account information. The required insurance shall be in effect for the longest governing statute of limitations and may be included in the Advertiser's production wrap up insurance policies that covers the Commercial(s).

6. **Indemnification of Production Company.** Advertiser and its Third Party Preparer, as applicable, (pursuant to its execution of this Agreement under Paragraph 5 ( c ) above) jointly and severally shall indemnify, defend, save and hold harmless the Production Company (and its affiliates, and the officers, directors, representatives and employees of all such entities) from and against any and all liabilities, damages, claims, judgments, actions, suits, fines, penalties, charges, taxes, violations, complaints, costs, expenses (including reasonable attorneys' fees) which may be asserted against, commenced, threatened or which may be incurred by the Production Company, that arise out of or related to (i) any breach by Advertiser (and its Third Party Preparer, as applicable) of any representation, obligation, covenant or promise in this Agreement; (ii) the intentional or negligent acts or omissions of the Advertiser (and its Third Party Preparer, as applicable), and their respective employees, agents and contractors, and (iii) the disclosure to or by the Advertiser (and its Third Party Preparer, as applicable) of protected personal information including but not limited to employee personal, wage and social security account information.

7. **Governing Law.** The governing law provision in the production agreement for the Commercial(s) shall apply to this Agreement.

8. **Relief.** The Parties recognize that serious and irreparable injury could result to the Production Company and its business if the Advertiser and its Third Party Preparer, as applicable, breach its obligations under this Agreement. Therefore, in that event, the Advertiser and its Third Party Preparer, as

applicable, agree that the Production Company will be entitled to a restraining order, injunction or other equitable relief in addition to other remedies and damages that would be available at law or equity.

9. **Term of Agreement.** This Agreement will continue in full force and effect (i) in the case of Producer Information which constitutes a trade secret within the meaning of applicable law, for as long it remains as a trade secret, (ii) in the case of other Producer Information (other than employee personal, wage, or social security account information) for a term of five (5) years and (iii) in the case of Producer Information that contains employee personal, wage, or social security account information for as long as it is protected by applicable law.

10. **Authority of Advertising Agency To Execute This Agreement.** Where this Agreement is executed by the Advertiser's Advertising Agency on its behalf as its agent, the Advertising Agency warrants and represents to the Production Company that it has the authority to execute and bind its principle, the Advertiser, to the same extent as if the Advertiser had executed this Agreement itself.

**WHEREFORE**, the Advertiser and its Third Party Preparer, as applicable, and the Production Company have executed this Agreement by their authorized representatives as of the date first written above.

\_\_\_\_\_  
Advertiser  
Address\_\_\_\_\_

\_\_\_\_\_  
Production Company  
Address\_\_\_\_\_

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

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

OR

Advertising Agency as the agent of the Advertiser:

\_\_\_\_\_  
Name of Advertising Agency

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

Title:\_\_\_\_\_

\_\_\_\_\_  
Third Party Preparer  
Address\_\_\_\_\_

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

Commercial(s):

Name or Title of Commercial(s): \_\_\_\_\_

Product/Service: \_\_\_\_\_

Agency: \_\_\_\_\_

Job Purchase Order Number: \_\_\_\_\_

Production Dates: \_\_\_\_\_