



MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (“Agreement”) is made and entered into as of _____, 20__ (“Effective Date”) by and between _____ (“Producer”) and _____, on its own behalf and on behalf of its applicable client (collectively, “Agency”) (each a “Party” and collectively referred to herein as the “Parties”).

For purposes of this Agreement “Client” means the advertiser client of the Agency who has requested Producer’s input regarding a possible commercial production or who has solicited a bid for services from Producer, _____ (“Client”); “Commercial” means a commercial production referred to in the Producer’s bid or Agency’s or Client’s specification form. Agency represents that it is soliciting bona fide bids for the production of the Commercial and Producer represents that its bid, if submitted, shall be a bona fide bid. If the terms and conditions of this Agreement are inconsistent with those in Client’s or Agency’s bid/specification form, production agreement or purchase order that address the subject matter of this Agreement, the terms and conditions of this Agreement shall control.

Now, therefore, the Parties agree as follows:

1. Confidential Information. Each Party receiving Confidential Information (as defined below) (each, a "Recipient,"), is receiving confidential disclosure of certain confidential or proprietary technical, business, operational, financial and/or commercial information, trade secret information and/or any information of the other Party (each, a “Discloser”) ("Confidential Information") for the purpose of exploring, establishing, or bidding for a business relationship for the production by the Producer of the Commercial and/or other commercial productions for the Client (collectively and severally, the “Purpose”).

Each Discloser would not disclose its Confidential Information without the Recipient's agreement to maintain the Confidential Information in confidence and to use such Confidential Information solely as permitted under this Agreement. Confidential Information can be in any form (e.g. electronic, digital, analog, hard copy or oral). Nothing in this Agreement shall require a Party to disclose its Confidential Information.

Specifically, the term “Confidential Information” includes confidential and proprietary information of Producer disclosed in connection with the Purpose and regardless of whether a commercial production project is awarded to Producer, including, but not limited to, production costs, discounts, bids, budgets, treatments, pitches, prices, relationships with employees, independent contractors and vendors, specifications, storyboards, scripts, sources, layouts, breakdowns, approach to a commercial project, financial and technical information, ideas, designs, specifications, techniques, models, data, programs, processes, technologies and methods of producing the work, all marketing, production and advertising concepts and

campaigns, processes, know-how, customer lists, marketing plans, systems and reports.

2. Non-Use and Non-Disclosure. Recipients will not disclose, distribute, copy or use any Confidential Information or the fact that a transaction is being considered pursuant to the Purpose without the prior written consent of the other Party and then only to the extent specified in such consent. Confidential Information may be used only to the extent reasonably required for the Purpose; provided however, that Recipients may only disclose the Confidential Information to those of its contractors, vendors, directors, officers, advisors, agents and employees (“Representatives”) who need to know such Confidential Information for the Purpose and who shall be bound by a written agreement to preserve the confidentiality of the Confidential Information in a manner consistent with this Agreement. The Recipient will be responsible for any breach of this Agreement by it or its Representatives, whether or not such Representatives are associated with the Discloser at the time of the breach. For the avoidance of any doubt Confidential Information shall never be disclosed, in any form, by a Recipient, its Representatives, employees and contractors to another commercial production business, entity, division or operation regardless of structure, ownership or affiliation.

The obligations of confidentiality in this Agreement do not extend to any item of Confidential Information which (i) is publicly known at the time of its disclosure, (ii) is lawfully received by a Recipient from a third party not known to the Recipient to be under a similar confidential agreement to this Agreement or under obligation of confidentiality to the Discloser, (iii) is published or otherwise made known to the public by the Discloser of Confidential Information, (iv) was generated independently by the receiving Recipient without reliance on or use of the Discloser’s Confidential Information (as proven by supporting documentation evidencing such independent generation).

3. Maintenance of Confidentiality. Recipient agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Recipient shall take at least those measures that it takes to protect its own confidential information of a similar nature, but in no event less than reasonable measures. Recipient shall immediately notify Discloser upon discovery of any loss or unauthorized disclosure of any Confidential Information.

If the Recipient receives a request to disclose all or any part of the Confidential Information under the terms of a valid subpoena or order issued by a court of competent jurisdiction or governmental body, Recipient agrees, to the extent legally permissible, to (i) promptly notify the Discloser of the existence, terms and circumstances surrounding such a request, so that the Discloser may seek an appropriate protective order or other reliable written assurance that confidential treatment will be accorded to Confidential Information, and (ii) only disclose that portion of the Confidential Information which counsel advises is legally required to be disclosed. At all times, the Discloser shall retain sole ownership of its Confidential Information.

4. Return of Materials. At the request of the Discloser, Recipient will promptly return to the Discloser or at Discloser’s instructions destroy any written or electronic Confidential Information and all physical media on which Confidential Information was

received from the other Recipient, including any copies thereof, with a letter confirming that the Confidential Information has not been reproduced or copied or that all copies have been returned. The Recipient and its Representatives shall not retain any copies, extracts or other reproductions, in whole or in part, of such written or electronic material, except as may be needed to comply with applicable law and, provided that Recipient may retain one copy of Confidential Information in its confidential files for legal or archival purposes, or use only in the event a dispute arises between the Parties hereunder and only in connection with that dispute.

5. No Warranty. All confidential information is provided “as is” and Disclosers make no warranties of any kind, express, implied or otherwise, regarding the accuracy, utility, completeness or performance of any Confidential Information.

6. No License. Nothing in this Agreement is intended to grant any rights to the Recipient in any copyrights or other intellectual property of the Discloser, nor shall this Agreement grant any Party any proprietary rights in or to the Confidential Information of the other Party.

7. Term. Recipient's obligations under this Agreement with respect to disclosures of Confidential Information made hereunder shall expire five (5) years from the date this Agreement is executed by the Parties, and for the longest period allowed by law with respect to trade secrets.

8. Remedies. Each Recipient acknowledges that a violation of this Agreement would cause irreparable harm to the Discloser for which no adequate remedy at law exists and each Recipient therefore agrees that, in addition to any other remedies available, both Parties will be entitled to seek injunctive relief to enforce the terms of this Agreement without a requirement that Discloser prove irreparable harm or provide the posting of a bond.

9. Miscellaneous. The terms of this Agreement may be modified or waived only by a separate writing signed by the Parties expressly so modifying or waiving such terms. No failure or delay by the Discloser in exercising any right, power or privilege shall operate as a waiver, nor shall any single or partial exercise preclude any other or further exercise of any right, power or privilege hereunder. The unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision. This Agreement shall bind and inure to the benefit of the Parties hereto and their permitted successors and assigns. This Agreement shall be governed by, and construed in accordance with, the laws of the State of _____ without giving effect to any conflicts or choice of laws provisions that would cause the application of the domestic substantive laws of any other jurisdiction. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may be executed in counterparts, with each an original and all of which together shall constitute one and the same instrument, and the Parties agree that they will be bound by electronic signatures. The Parties expressly agree and acknowledge that any disputes relating to this Agreement will be exclusively adjudicated by federal and state courts located in ____.

Each person who signs this Agreement represents that he/she has the authority and is empowered to sign and deliver this Agreement on behalf of the Recipient that he/she represents.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have executed this Mutual Non-Disclosure Agreement as of the date first set forth above.

PRODUCER

By: _____

Name: _____

Title: _____

Address: _____

**AGENCY FOR ITSELF AND
ITS ADVERTISER/CLIENT**

By: _____

Name: _____

Title: _____

Address: _____

ACKNOWLEDGED AND AGREED TO BY:

REPRESENTATIVE

By: _____

Company Name: _____

Printed Name: _____

Title: _____