

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 _____, ("Agency") (each a "Party" and collectively referred to herein as the "Parties").

For purposes of this Agreement "Agency" means the undersigned Advertising Agency, "Client" means the advertiser client of the Agency identified on the signature page of this Agreement; "Commercial" means a commercial production referred to in the Producer's bid/specification form. The term "Agency Affiliate" means (i) the wholly owned subsidiary of the Agency's parent ("Owner") where the Agency is also a wholly owned subsidiary (ii) which Agency Affiliate is an advertising agency and does not operate as a commercial production, post production business or acts as an in-house cost consulting entity. 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. Agency is signing this Agreement for itself and for its Client who is also a "Party," "Recipient" and "Discloser" under this Agreement.

Now, therefore, the Parties agree as follows:

1. **Confidential Information.** Each Party receiving Confidential Information (as defined below) (each, a "Recipient," and together, the "Recipients"), 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 designated as "Confidential", "Proprietary" or by similar designation, or which under the circumstances surrounding disclosure ought to be treated as confidential ("Confidential Information") for the purpose of exploring, establishing, performing or carrying out a contractual business relationship for the production by the Producer of the Commercial and/or other commercial productions for the Client (collectively and severally, the "Transaction"). Each disclosing Party (each a "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, with respect to the Producer, the term "Confidential Information" includes confidential and proprietary information of Producer disclosed in connection with the Transaction (during each phase including pre-production, conference(s), pre-bid, bid, production, shoot, wrap and post-production) and regardless of whether a commercial production project is awarded to Producer, including, but not limited to, production costs, discounts, bids, budgets, treatments, prices, relationships with employees, independent contractors and vendors, specifications, 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 customized terms of, and attachments to, the Producer's bid/specification form or production contract or other production

documents, processes, know-how, customer lists, marketing plans, systems and reports, and information discussed by Producer at any Agency or Client meetings.

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 or is under a production contract 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 purposes of evaluating, producing or carrying out the Transaction; 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 of evaluating, performing or carrying out or producing the Transaction and who shall be bound by a written agreement or other legally enforceable written obligations 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.

Without limiting the foregoing, where the Discloser is the Producer and a Recipient Representative is a cost consultant of the Client or Agency, the Recipient shall secure its Representative's express written agreement that it will not make any business or other use of, and will in perpetuity hold in confidence, all Confidential Information acquired or learned by such Representative and shall not use or disclose such information except as permitted in this Agreement. Prohibited uses and disclosures by such Representative include, but are not limited to, uses for or disclosures to a competitor of the Producer and uses for or disclosures to any other client or prospective client of such Representative, regardless of whether the Confidential Information is aggregated with other information or its not identified with the Producer.

Producer Confidential Information may be disclosed to the Owner (unless an independent third party is required by the FTC/DOJ) for purposes permitted under this Agreement and disclosed, on an aggregate basis, to other Agency Affiliates provided: (i) the Owner and each Agency Affiliate Recipient agrees to be bound by this Agreement; (ii) Producer Confidential Information to be disclosed is at least three months old; (iii) Producer Confidential Information is aggregated with similar types of confidential information of at least 4 other commercial producers with whom the Agency or Agency Affiliate have contracted to produce commercials and who have consented in writing to have their confidential information aggregated and disclosed in accordance with this procedure provided however that no aggregated producer confidential information represents more than 25% on a weighted basis of any statistic and further provided that all information is sufficiently aggregated such that it would not allow a Recipient to identify the Confidential Information of the Producer or of any other producer whose confidential information is aggregated.

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 Confidential Information (as proven by supporting documentation evidencing such independent

generation) or (v) was received either prior to the Effective Date of this Agreement or was received for the first time only after the termination or expiration of this Agreement.

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 reproduce Discloser's proprietary rights notices on any copies, in the same manner in which such notices were set forth in or on the original. 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 (i) immediately 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 and that none of the Confidential Information was disclosed to anyone except in accordance with this Agreement. 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 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.

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 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, and neither Party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other Party except as set forth herein. This Agreement may be executed in counterparts, with each an original and both 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: _____

**ADVERTISER/CLIENT OF AGENCY
AS IDENTIFIED TO PRODUCER BY
AGENCY:**

Name of Client: _____

Address of Client: _____

Contact Person: _____