

**ASSURANCE OF COMPLIANCE AGREEMENT
BETWEEN
THE EXECUTIVE OFFICE OF THE GOVERNOR
OFFICE OF TOURISM, TRADE AND ECONOMIC DEVELOPMENT
OFFICE OF FILM AND ENTERTAINMENT
AND
(NAME OF PRODUCTION COMPANY)**

THIS ASSURANCE OF COMPLIANCE AGREEMENT (“Agreement”) (OFE Contract Number **XXXX-XXX**) is made and entered into in the City of Tallahassee, Leon County, Florida, on this day of **(month, year)** by and between THE OFFICE OF FILM AND ENTERTAINMENT (“OFE”), within THE OFFICE OF TOURISM, TRADE AND ECONOMIC DEVELOPMENT (“OTTED”), an agency located in the Executive Office of the Governor, Suite 2001, The Capitol, Tallahassee, Florida 32399-0001, and **(Name of Production Company)** (“Reimbursement Recipient”), located at **(Production Company’s address)**. OFE, OTTED, and the Reimbursement Recipient are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Legislature of the State of Florida, by enacting Section 288.1254, Florida Statutes, created a financial incentive program within the OFE to encourage the use of Florida as a site for filming, and for providing production services for films, television programs, and digital media projects. This program is designed to reimburse qualified expenditures for projects approved by the OFE that meet the criteria set forth in the above statute. Projects shall be reimbursed as funding by the Legislature permits;

WHEREAS, the Reimbursement Recipient’s project has been certified by OTTED as a Qualified Production and determined eligible to participate in the state’s Entertainment Industry Financial Incentive Program; and

WHEREAS, the purpose of this Agreement is to define the Parties’ mutual expectations and responsibilities for the reimbursement of qualified expenditures as defined by Section 288.1254, Florida Statutes, the OFE’s policies and procedures and guidelines.

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

1. PARTIES:

The parties and their respective addresses for purposes of this Agreement are as follows:

For OFE/OTTED: State Film Commissioner (or OTTED Representative)
Executive Office of the Governor
Suite 2001, The Capitol
Tallahassee, Florida 32399-0001
Telephone Number: (850) 410-4765
Facsimile Number (850) 410-4770
Email: _____

For Production Company:

(Production Company Name)

Production Company Address
Telephone Number: XXX-XXX-XXXX
Facsimile Number: XXX-XXX-XXXX
Email: _____

2. AGREEMENT MANAGERS:

The Parties each hereby appoint an Agreement Manager to facilitate the terms of this Agreement. All written approvals referenced in this Agreement must be obtained from the Parties' Agreement Managers or their designees. The OFE Agreement Manager is Lucia Fishburne, State Film Commissioner, telephone: (850) 410-4765. The Reimbursement Recipient Agreement Manager is (Name, Title, telephone number XXX-XXX-XXXX). Either Party may change its Agreement Manager at any time by written notice to the other.

3. TERM:

This Agreement will commence on (Certification Date) and, unless earlier terminated pursuant to the terms hereof, will expire on (fiscal year end date). The OFE shall only reimburse an approved percentage of qualified expenditures incurred during the term of this Agreement.

4. NOTICES:

Unless otherwise stated by the OFE Agreement Manager, all notices, demands, requests, and other communications given hereunder shall be made in writing and shall be delivered (i) in person, (ii) by certified mail, return receipt requested, (iii) by receipt-confirmed overnight delivery service, or (iv) via confirmed facsimile. Any such notice, demand, request, or other communication shall be effective only if and when it is received by the Agreement Manager.

5. AMENDMENT AND MODIFICATION:

- a. This Agreement may not be altered, modified, amended, or changed in any manner, except pursuant to a written agreement executed and delivered by each of the Parties. Additionally, any such modification, amendment or change shall be effective on the date of delivery or such later date as the Parties may agree therein.
- b. Modification of this Agreement or any notices permitted or required under this Agreement may be made by facsimile transmission. Receipt of the facsimile transmission shall for the purposes of this Agreement be deemed to be an original, including signatures.

6. EXHIBITS:

Attached to and made a part of this Agreement are the following Exhibits; each of which is incorporated into and is an integral part of this Agreement:

Exhibit A: OFE Entertainment Industry Financial Incentive Program Policies and Procedures

Exhibit B: Reimbursement Recipient's Project Application

Exhibit C: Single Audit Act Requirements

Exhibit D: Guidelines for Submitting Qualified Expenditures

Exhibit E: Sample Qualified Expenditures Budget

Exhibit F: OTTED Letter of Certification.

7. DUTIES AND OBLIGATIONS:

a. The Reimbursement Recipient hereby agrees that it shall fully comply with the OFE's policies and procedures in Exhibit A as determined by the OFE. By signing this Agreement, the Reimbursement Recipient certifies that it is an eligible recipient for reimbursement pursuant to Section 288.1254, Florida Statutes, for a production that will generate qualified expenditures as defined in Florida Statute 288.1254(1)(g) or for digital media projects 288.1254(4)(d), and meet the stated minimum in qualified expenditures as set in Section 288.1254(4)(b)1 or 2; Section 288.1254(4)(c); or Section 288.1254(4)(d).

b. If start of production is delayed beyond the Reimbursement Recipient's production start date listed in the application, in order to start within the 45-day window thereafter, it must provide proof of financing dedicated to the production equal or greater than its approved qualified expenditures, and do so by the production's original start date. Not doing so will forfeit its incentive certification.

c. Reimbursement Recipient must remain on a reasonable schedule throughout pre-production, production and post-production, or forfeit its incentive certification. Once a production or project begins, it shall continue work per its schedule until completion. Lack of funding can not be a reason for delay once a production starts. Therefore, any break in production beyond one week not in the original production schedule, except for reasons due to force majeure, shall require Reimbursement Recipient to immediately provide proof of financing dedicated to the production equal to or greater than its approved qualified expenditures, or it may forfeit its incentive certification.

8. REIMBURSEMENT:

a. Based upon the amount of qualified expenditures approved by the OFE, \$ **(Amount Qualified)**, and the approved percentage, **(____ %)**, the maximum reimbursement for qualified expenditures that may be made to the Reimbursement Recipient under this Agreement is \$ **(Amount Certified)**. If the Reimbursement Recipient spends less than the amount of qualified expenditures approved by the OFE, or if funds are not available for certification, its total reimbursement from the State of Florida will be reduced proportionally. The qualified expenditures approved by the OFE may not be increased for any reason.

b. The Reimbursement Recipient shall submit one request for reimbursement in accordance with Exhibit D of this agreement. Such submission shall be made no more than 90 days after the last qualified expenditure is made by the Reimbursement Recipient, unless an extension is granted by OFE in writing. No reimbursement will be made on a request for reimbursement received after August 10, 2008 without expressed written approval from the OFE. **The Reimbursement Recipient agrees that it will notify the OFE immediately if its qualified expenditures are expected to fall below the minimum requirements of its queue.**

c. OFE shall reimburse qualifying expenditures from 10% to 20%, depending on the type of production or project applying and the terms of its queue, not to exceed the certified amount.

The OFE shall only reimburse the Reimbursement Recipient for the approved percentage of actual expenditures paid and shall not reimburse on outstanding accounts.

d. Upon the OFE's written presentation of evidence, the Reimbursement Recipient shall return any reimbursement overpayments to OFE within 30 calendar days.

e. **FAMILY FRIENDLY CERTIFICATION** – Reimbursement recipient agrees, if it applied for family-friendly certification, that it shall, after the post-production is complete, submit 3 DVD copies of the final product (the cut that is intended for distribution) to OFE for review. If found to abide by Florida Statute 288.1254(4)(f), the production is eligible to receive an additional rebate equal to 2% of its actual qualified expenditures, providing funds are available in the fiscal year in the appropriate queue. If no funds are available at the time of submission of the distribution-ready copy, Reimbursement Recipient will be added to the queue to await funds that might become available before the end of the fiscal year. If funds do not become available in that fiscal year, the production will be considered 'first in line' for funds in the appropriate queue in the next fiscal year, but not ahead of certified productions crossing into the next fiscal year.

9. AVAILABILITY OF FUNDS:

The OFE's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature of the State of Florida for the specific purpose of funding the OFE's obligations under this Agreement. In the event of a state revenue shortfall, the total funding may be reduced accordingly. The OFE shall be the final determiner of the availability of any funds.

10. WOMEN AND MINORITY VENDORS:

Reimbursement Recipient is encouraged to use small businesses, including minority and women-owned businesses as subcontractors or sub-vendors under this Contract. The directory of certified minority and women-owned businesses can be accessed from the website of the Department of Management Services, Office of Supplier Diversity <http://www.osd.dms.state.fl.us>.

11. INDEPENDENT CAPACITY OF CONTRACTOR:

a. The Parties agree that Reimbursement Recipient, its officers, agents, and employees, in performance of this Agreement, shall act in the capacity of an independent contractor. Neither Reimbursement Recipient, nor any of its employees or agents, shall be entitled to receive any benefits of State employment, including retirement benefits or any other rights or privileges connected with employment in the State Career Service System. Reimbursement Recipient agrees to take such steps as may be necessary to ensure that each subcontractor of Reimbursement Recipient will be deemed to be an independent contractor and will not be considered or permitted to be an agent of the State of Florida.

b. Reimbursement Recipient shall not pledge the State of Florida's nor OFE's credit nor make the State of Florida or OFE a guarantor of payment or surety for any contract, debt, obligation, judgment lien, or any form of indebtedness.

12. LIABILITY:

OFE shall not assume any liability for the acts, omissions to act, or negligence of Reimbursement Recipient, its agents, servants, or employees. In all instances, Reimbursement

Recipient shall be responsible for any injury or property damage resulting from any activities conducted by Reimbursement Recipient.

13. INDEMNIFICATION:

Reimbursement Recipient, shall indemnify and hold OFE harmless to the fullest extent permitted by law, from and against any and all claims or demands for damages resulting from personal injury, including without limitation, death or damage to property, arising out of any activities performed by Reimbursement Recipient under this Agreement and shall investigate and defend any and all claims at its own expense. Without exception, Reimbursement Recipient will indemnify and hold harmless the State of Florida and its employees and agents from liability of any nature or kind, including costs and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured by Reimbursement Recipient.

14. AUDITING RECORDS:

a. Reimbursement Recipient shall retain and maintain all records and make such records available for an audit as may be requested. Records shall include independent auditor working papers, books, documents, and other evidence, including, but not limited to, vouchers, bills, invoices, requests for payment, and other supporting documentation, which, according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all program costs expended in the performance of this Agreement. The records shall be subject at all times to inspection, review, or audit by state personnel of the Office of the Auditor General, Chief Financial Officer, Office of the Chief Inspector General, or other personnel authorized by OFE and copies of the records shall be delivered to OFE upon request.

b. Reimbursement Recipient agrees to comply with the audit requirements of Section 215.97, Florida Statutes, and those found in Exhibit C. This provision is applicable because the Reimbursement Recipient qualifies as a non-state entity as defined in Section 215.97(2)(l), Florida Statutes.

15. ACCESS TO RECORDS:

a. OFE may perform on-site reviews to independently validate any information or reports submitted to OFE. Reimbursement Recipient shall allow OFE's Agreement Manager and other OFE authorized personnel access to any information and any other documents requested by OFE for purposes of monitoring Reimbursement Recipient's in accordance with this Agreement.

b. Reimbursement Recipient shall, subject to the provisions of Chapter 119, Florida Statutes, Sections 288.1067, 288.047, 288.075, 288.9520, and 288.99, Florida Statutes, and other relevant laws, permit public access to all documents or other materials prepared, developed or received by it in connection with the performance of its obligations or the exercise of its rights under this Agreement. This Agreement may be terminated by OFE if Reimbursement Recipient fails to allow such public access. Such termination shall result in the return of any previous reimbursements to the Reimbursement Recipient.

16. GOVERNING LAW:

This Contract is executed and entered into in the State of Florida, and shall be construed, performed, and enforced in all respects in accordance with the laws and rules of the State of Florida. All references to Florida Law and OFE Policies and Procedures are to the 2006 editions.

Any litigation arising under this Agreement shall be brought in the appropriate court in Leon, County, Florida, applying Florida Law.

17. STRICT COMPLIANCE:

Reimbursement Recipient agrees that all acts to be performed by it in connection with this Agreement must be performed in strict conformity with all local, state and federal laws and regulations.

18. SANCTIONS, BREACHES, AND REMEDIES:

a. In the event that Reimbursement Recipient fails to comply with any of the terms of this Agreement, OFE may exercise any remedies available at law or in equity, including, without limitation the right to terminate this Agreement in accordance with the terms hereof.

b. In the event that Reimbursement Recipient defaults in the performance of any duty, obligation, covenant, or agreement imposed on it or made by it in this Agreement or by law, as determined by the OFE, the OFE shall provide a notice of the default to the Reimbursement Recipient. Reimbursement Recipient shall have fifteen (15) calendar days following the receipt of the notice within which to initiate action to correct the default. Reimbursement Recipient shall have thirty (30) calendar days following the date of notice of default, either to cure the default, or to demonstrate to the satisfaction of OFE that corrective action has been taken and will be likely to result in curing the breach within a period of time that OFE agrees is reasonable. In the event that Reimbursement Recipient fails to cure the default (within the timeframe established above, whether immediately or otherwise) or make such demonstration to the satisfaction of OFE, OFE may exercise any remedy available to it under the law or in equity, including, without limitation the right to terminate this Agreement immediately upon notice to Reimbursement Recipient.

c. Upon termination of this contract for any of the reasons discussed in this section, all prior reimbursements shall be returned to the OFE. Undistributed incentive funds, initially allocated for the Reimbursement Recipient, shall be reallocated to other qualified applicants.

d. The Reimbursement Recipient shall provide a credit acknowledgement, logo acknowledgement, or other acknowledgement in a form agreed to in writing by both parties, in the end credits of the production as required by section 288.1254(3)(a), Florida Statutes. Failure to comply with this statute will result in a penalty of \$10,000 payable to OTTED.

19. SEVERABILITY:

If any term or provision of this Agreement is found to be illegal, invalid, or unenforceable, then such term or provision shall be severed from this Agreement. This Agreement and the rights and obligations of the Parties shall be construed as if this Agreement did not contain such severed term or provision, and this Agreement otherwise shall remain in full force and effect.

20. PRESERVATION OF REMEDIES:

No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default under this Agreement will impair any such right, power, or remedy of either Party, nor will such delay or omission be construed as a waiver of any such breach or default or any similar breach or default.

21. DISCRIMINATORY VENDOR:

Reimbursement Recipient affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes, and that at no time has Reimbursement Recipient been placed on the Discriminatory Vendor List. Reimbursement Recipient further agrees that it shall not violate

such law and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.

22. NON-DISCRIMINATION:

Reimbursement Recipient shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, race, sex, creed, color, handicap, national origin, or marital status.

23. HARASSMENT-FREE WORKPLACE:

Reimbursement Recipient shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management.

24. PUBLIC ENTITY CRIMES:

Reimbursement Recipient affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes, and that at no time has Reimbursement Recipient been convicted of a Public Entity Crime. Reimbursement Recipient agrees that it shall not violate such law and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement.

25. UNAUTHORIZED ALIENS:

OFE shall consider the employment by any contractor or subcontractor of unauthorized aliens, as described by Section 274A(e) of the Immigration and Nationalization Act, cause for termination of this Agreement.

26. FORCE MAJEURE

Neither party shall be have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by Acts of God, terrorism, or organized labor work stoppage beyond the reasonable control of the party whose performance is affected.

27. LOBBYING:

Reimbursement Recipient shall not use any funds received pursuant to this Agreement for lobbying the Legislature, the judicial branch, or any state agency.

28. ATTORNEY FEES:

Unless authorized by law and agreed to in writing by OFE, OFE shall not be liable to pay attorney fees, interest, or cost of collection.

29. NON-ASSIGNMENT:

a. The Reimbursement Recipient may not assign, delegate, nor otherwise transfer its rights, duties, or obligations under this Agreement. Any assignment, delegation, or transfer otherwise occurring will be null and void.

b. OFE shall at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to Reimbursement Recipient.

30. ENTIRE CONTRACT:

This Agreement and the attached Exhibits A, B, C, D, E and F constitute a complete and exclusive statement of the terms and conditions of the Agreement and supersedes and replaces any and all prior negotiations, understandings and agreements, whether oral or written, between the Parties with respect thereto. Except as expressly provided in this Agreement, no term, condition, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the provisions of this Agreement shall be effective or binding upon the Parties unless agreed to in writing by the party against whom enforcement is sought.

31. COUNTERPARTS:

This Agreement may be executed in counterparts by the parties hereto; each of which, when so executed and delivered, shall be an original, but both counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

OFE:

STATE OF FLORIDA, EXECUTIVE OFFICE OF
THE GOVERNOR, OFFICE OF TOURISM,
TRADE AND ECONOMIC DEVELOPMENT,
OFFICE OF FILM AND ENTERTAINMENT

LUCIA FISHBURNE, State Film Commissioner

DATE: _____

REIMBURSEMENT RECIPIENT:

(NAME OF PRODUCTION COMPANY)

Signature of Recipient Agreement Mgr

Print Name of Recipient Signator and Title

DATE: _____