

**ASSURANCE OF COMPLIANCE AGREEMENT
BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF ECONOMIC OPPORTUNITY
DIVISION OF STRATEGIC BUSINESS DEVELOPMENT
OFFICE OF FILM AND ENTERTAINMENT
AND
<RECIPIENT>.**

THIS ASSURANCE OF COMPLIANCE AGREEMENT (“Agreement”) (OFE Contract Number <_____>) is made and entered into in the City of Tallahassee, Leon County, Florida, on this _____ day of _____, 2012, by and between THE OFFICE OF FILM AND ENTERTAINMENT (“OFE”), within the DIVISION OF STRATEGIC BUSINESS DEVELOPMENT (“DSBD”), located in the Department of Economic Opportunity, an agency of the State of Florida, whose address is Suite 2001, The Capitol, Tallahassee, Florida 32399-0001, and <recipient>, <project name> (“Recipient”), a <business type> whose address is: <address>, <city, state, zip>. OFE, DSBD, and the 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 the Entertainment Industry Financial Incentive Program (the “Program”) within the OFE to encourage the use of Florida as a site for filming, for the digital production of films, and to develop and sustain the workforce and infrastructure for film, digital media, and entertainment production. The Program is designed to provide tax credits based upon qualified expenditures for projects approved by the OFE that meet the criteria set forth in the above statute. Projects shall be awarded tax credits as the Legislature permits; and

WHEREAS, the Recipient’s project has been certified by DSBD as a Qualified Production and determined eligible to participate in the Program; and

WHEREAS, the purpose of this Agreement is to define the Parties’ mutual expectations and responsibilities for the award of tax credits based upon qualified expenditures as defined by the Program and its implementing regulations 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/DSBD:

State Film Commissioner (or DSBD Representative)
Florida Office of Film & Entertainment
Suite 2001, The Capitol
Tallahassee, Florida 32399-0001
Telephone Number: (850) 717-8990
Facsimile Number (850) 410-4770
Email: film.incentive@deo.myflorida.com

For Recipient:

<recipient>
<address>
<city, state, zip>
<phone number>
<fax number>
<email address>

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 Shari Kerrigan – *State Film Commissioner*, telephone: (850) 717-8990. The Recipient Agreement Manager is <first name, last name, position>, telephone: <phone number>. Either Party may change its Agreement Manager at any time by written notice to the other.

3. TERM:

This Agreement will commence on <start date> and, unless terminated earlier pursuant to the terms hereof, will expire on the tax credit award date. The OFE shall only award tax credits for 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, (iv) via confirmed facsimile, or (v) email. 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; provided, however, that OFE may unilaterally amend this Agreement via supplemental Certification Letters issued under Rule 73A – 3.004(2)(f), which shall be added to Exhibit D of this Agreement if and when they are issued. 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: Section 288.1254, Florida Statutes, Rule Chapter 73A-3, Fla. Admin. Code

Exhibit B: Recipient's Project Application

Exhibit C: Single Audit Act Requirements

Exhibit D: DEO Letter(s) of Certification

Exhibit E: Other-Communications

7. DUTIES AND OBLIGATIONS:

a. The 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 Recipient certifies that it is an eligible recipient for tax credit award pursuant to Section 288.1254, F.S., for a production that will generate qualified expenditures as defined in Section 288.1254(1)(h), F.S. and meet the stated minimum in qualified expenditures as set in Section 288.1254(4)(b)1, 2 or 3, F.S.

b. If start of production is to be delayed beyond the Recipient's production start date listed in the application, in order to start within the 45-day window thereafter, Recipient must notify the OFE in writing prior to the production's original start date and provide proof of financing, if not already on file with the OFE, dedicated to the production equal or greater than its approved qualified expenditures. Recipient's failure to do so will forfeit its incentive certification.

c. 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 cannot 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 Recipient to immediately notify the OFE in writing, or it may forfeit its incentive certification.

d. Recipient must notify the OFE and provide proof of the start and end date of principal photography, production or project. A production report or a signed statement verifying the start and end date is acceptable.

e. As a condition of receiving tax credits the Recipient must provide:

(1) Placement of a “Filmed in Florida” or “Produced in Florida” logo, provided by OFE, in the end credits. The size and placement of such logo shall be commensurate to other logos used. If no logos are used, the statement “Filmed in Florida using Florida’s Entertainment Industry Financial Incentive,” or a similar statement approved by the OFE, shall be used.

(2) Placement of the “Filmed in Florida” or “Produced in Florida” logo on all packaging material and hard media, unless such placement is prohibited by licensing or other contractual obligations. The size and placement of such logo shall be commensurate to other logos used. If no logos are used, the statement “Filmed in Florida using Florida’s Entertainment Industry Financial Incentive,” or a similar statement approved by the OFE, shall be used.

(3) Five (5) different high resolution still production photos in a digital format to the OFE before public distribution of the production, with rights cleared for Florida’s promotional use only.

(4) Three (3) copies of the full-size poster for the production to the OFE before public distribution of the production. If none are created, two copies of other marketing materials shall be provided.

(5) One (1) copy of the electronic press kit for the production at the time it is made available to the press, if one is created.

(6) Three (3) copies of the final released version of the production to the OFE.

(7) Placement of a 30-second “Visit Florida” promotional video on all optical disc formats of a film, unless such placement is prohibited by licensing or other contractual obligations, and such is indicated in writing by an officer of the Florida Film Production Office. The 30-second promotional video shall be approved and provided by the Florida Tourism Industry Marketing Corporation in consultation with the Film Commissioner.

8. AWARD OF TAX CREDITS:

a. Based upon the amount of qualified expenditures approved by the OFE, *<qe certified>*, and the approved percentage, *<approved percent>*, the maximum tax credit award for qualified expenditures that may be made to the Recipient under this Agreement is: *<max cert amt>*. If the Recipient spends less than the amount of qualified expenditures approved by the OFE, its total tax credit 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 Recipient shall submit one request for tax credit award in accordance with Exhibit A of this agreement. No expenditures will be considered for qualification after *CPA audit is received by the OFE*. The 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 award tax credits for qualifying expenditures from *20% to 30%*, 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 award tax credits to the Recipient for the approved percentage of actual expenditures paid and shall not award tax credits on outstanding accounts.

d. FAMILY FRIENDLY CERTIFICATION – If Recipient applied for family-friendly certification, it shall, after the post-production is complete, submit 3 electronic copies of the release version or the production or video game (the cut that is intended for distribution) to OFE for review. If found to abide by section 288.1254(4)(b)4, Florida Statutes, the production is eligible to receive an additional tax credit award equal to 5% of its actual qualified expenditures.

9. AVAILABILITY OF TAX CREDITS:

The OFE's performance under this Agreement is contingent upon the allocation of tax credits by the Legislature of the State of Florida for the specific purpose of providing tax credits for the OFE's obligations under this Agreement. In the event of a state revenue shortfall, the total allocation of tax credits may be reduced accordingly. The OFE in accordance with direction from the Governor and Legislature shall be the final determiner of the availability of tax credit allocations.

10. WOMEN AND MINORITY VENDORS:

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 Recipient, its officers, agents, and employees, in performance of this Agreement, shall act in the capacity of an independent contractor. Neither 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. Recipient agrees to take such steps as may be necessary to ensure that each subcontractor of 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. 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 Recipient, its agents, servants, or employees. In all instances, Recipient shall be responsible for any injury or property damage resulting from any activities conducted by Recipient.

13. INDEMNIFICATION:

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 Recipient under this Agreement and shall investigate and defend any and all claims at its own expense. Without exception, 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 Recipient.

14. AUDITING RECORDS:

a. 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, upon reasonable notice, 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. Recipient agrees to comply with the audit requirements of Section 215.97, Florida Statutes, and those found in Exhibit C.

15. ACCESS TO RECORDS:

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

b. Recipient shall, subject to the provisions of Chapter 119, Florida Statutes, Section 288.075, Florida Statutes, and other relevant laws protecting Recipient's confidential information, 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 Recipient fails to allow such public access. Such termination shall result in the return of any previous tax credit awards made to the 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. Any litigation arising under this Agreement shall be brought exclusively in the appropriate state court in Leon County, Florida, and only after Recipient has fully exhausted all available administrative remedies. The Parties waive their right to jury trial in any such proceeding.

17. STRICT COMPLIANCE:

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, including but not limited all statutes pertaining to workers' compensation, unemployment insurance requirements, and to those attached hereto as Exhibit A.

18. SANCTIONS, BREACHES, AND REMEDIES:

a. In the event that 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 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 Recipient. Recipient shall have fifteen (15) calendar days following the receipt of the notice within which to initiate action to correct the default. 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 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 Recipient.

c. Upon termination of this contract for any of the reasons discussed in this section, all prior tax credit awards Recipient may have received pursuant to this Agreement shall be returned to the OFE. Undistributed tax credits, initially allocated for the Recipient, shall be reallocated to other qualified applicants.

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:

Recipient affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes, and that at no time has Recipient been placed on the Discriminatory Vendor List. 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:

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:

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

24. PUBLIC ENTITY CRIMES:

Recipient affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes, and that at no time has Recipient or an affiliate been convicted of a Public Entity Crime. 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:

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

26. FORCE MAJEURE

Neither party shall 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:

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 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 Recipient.

30. ENTIRE CONTRACT:

This Agreement and the attached Exhibits A, B, C, D, and E 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. WARRANTY OF AUTHORITY:

Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective Party to the Agreement.

32. 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, DEPARTMENT OF
ECONOMIC OPPORTUNITY, DIVISION OF
STRATEGIC BUSINESS DEVELOPMENT,
OFFICE OF FILM AND ENTERTAINMENT**

Signature of OFE Agreement Mgr.

Shari Kerrigan
State Film Commissioner

DATE: _____

RECIPIENT:

<RECIPIENT>

Signature of Recipient Agreement Mgr.

Print Name of Recipient Signatory and Title

DATE: _____

